

United States
Circuit Court of Appeals
For the Ninth Circuit.

THOMAS JOHNSON,

Appellant,

vs.

CLARENCE R. HOTCHKISS, United States
Marshal for the District of Oregon,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Oregon.

FILED

AUG 21 1907

FAGLE K. O'BRIEN,

DEPUTY

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Mr. C. T. McKINNEY, 534 Henry Building, Seattle, Washington, and Mr. FRANK LONERGAN, Porter Building, Portland, Oregon,
For the Appellant.

Mr. GEORGE NEUNER, United States Attorney for the District of Oregon, and Mr. FRANCIS E. MARSH, Assistant United States Attorney for the District of Oregon, Old Post Office Building, Portland, Oregon.
For the Appellee.

In the District Court of the United States for the
District of Oregon.

No. L.—10556.

In the Matter of the Application of THOMAS
JOHNSON for a Writ of Habeas Corpus.

CITATION.

United States of America,—ss.

To the United States Marshal and United States
Attorney for the District of Oregon:

WHEREAS, Thomas Johnson has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the Judgment, Order and Decree rendered lately to wit: on the 7th day of March, 1929, in the District Court of Oregon,

made in favor of you and the United States Government, ADJUDGING and DECREERING that the writ of habeas corpus, as prayed for in the petition filed herein, be denied, and that the order of removal be granted in said matter.

You are cited to appear before the Ninth Circuit Court of Appeals within the time fixed by statute, to do and receive what may obtain to justice in the premises.

Given under my hand this 7th day of March, 1929, at the city of Portland, Oregon.

JOHN H. McNARY,
Judge.

Service acknowledged 3/7/29.

FORREST E. LITTLEFIELD.

[Endorsed]: Filed Mar. 7, 1929. [1*]

In the District Court of the United States for the
District of Oregon.

November Term, 1929.

BE IT REMEMBERED, That on the 25th day of February, 1929, there was duly filed in the District Court of the United States for the District of Oregon, a petition for writ of habeas corpus, in words and figures as follows, to wit: [2]

*Page-number appearing at the foot of page of original certified Transcript of Record.

[Title of Court and Cause.]

PETITION FOR WRIT OF HABEAS CORPUS
TO PREVENT REMOVAL.

To the Honorable, the District Court of the United
States, in and for the District of Oregon:

The petition of Thomas Johnson respectfully
shows:

1. That your petitioner is a resident of the city
of Portland, Multnomah County, State of Oregon,
in this circuit and district,

2. That your petitioner is now actually impris-
oned and restrained of his liberty and detained by
color of the authority of the United States in the
custody of Clarence R. Hotchkiss, United States
Marshal in and for the District of Oregon, as
aforesaid,

3. That the sole claim and sole authority by vir-
tue of which the said C. R. Hotchkiss, United
States Marshal, as aforesaid, so restrains and de-
tains your petitioner is a certain paper which pur-
ports to be a commitment in writing, a copy of
which is hereunto annexed, marked "A".

4. Upon information and belief, and without
facts sufficient to show probable cause, the United
States Commissioner, to wit: the Honorable K. F.
Frazer, United States Commissioner for the Dis-
trict of Oregon, in a certain proceedings instituted
on behalf of the United States, upon a charge that
your petitioner had committed the crime of con-

spiracy to violate the National Prohibition Act, and to smuggle intoxicating liquors within the jurisdiction of the State of Washington.

5. That the petitioner did not commit the crime of conspiracy and smuggling within the jurisdiction of the State of Washington; [3] that your petitioner has not committed the crime of conspiracy or smuggling anywhere.

6. That the indictment does not allege in the charging part, nor in the overt acts any fact showing that Thomas Johnson ever committed any crime in the State of Washington of the character and kind described therein.

7. That there was no testimony produced at said hearing of any kind, or character or description upon which the Commissioner was warranted in finding probable cause for commitment.

8. That the petitioner believes that the Commissioner committed him merely as a ministerial officer of the court and not under a judicial determination as is by the law required.

9. That your petitioner is entitled to a judicial determination upon the facts produced which would warrant the Commissioner in finding probable cause that a crime has been committed in the State of Washington and upon which the Grand Jury of the State of Washington, could find probable cause.

10. That the indictment is wholly insufficient in its allegations of facts to make out a *prima facie* case against the said defendant.

11. That the United States Commissioner erred

in holding that a certified copy of the indictment and purported identify was conclusive upon said Commissioner.

12. That said proceedings before the Commissioner were, and for the foregoing reasons, void and that the commitment is void and that the petitioner is now confined and deprived of his liberty in violation of the Constitution of the United States, and in violation of Section 591 of the United States Code, Annotated, and other statutes of the United States, and in violation of the rights secured to your petitioner under the law. [4]

WHEREFORE, your petitioner prays that a writ of habeas corpus may issue directed to the said C. R. Hotchkiss, United States Marshal, and to each and all of his deputies, requiring him to bring and have your petitioner before this Court at a time to be by this Court determined, together with a true cause of the dentention of your petitioner to the end that due inquiry may be had in the premises, and that a writ of certiorari may at the same time issue, directed to the said K. F. Frazer, United States Commissioner, for the District of Oregon, under the laws of the United States, concerning the removal of your petitioner from one jurisdiction to a foreign jurisdiction directing him to certify to this Court all the proceedings that took place before him and all the evidence that was offered before him in the said proceedings which resulted in the issue of the said commitment, and that this Court may proceed in the summary way to determine the facts of this case in that regard, and the

legality of your petitioner's impairment, restraint and detention, and thereupon to dispose of your petitioner as law and justice may require, and that a typewritten copy of the transcript of evidence be made a part of this writ and incorporated herein by reference, duly certified by said United States Commissioner.

Dated this 25th day of February, 1929.

C. T. McKINNEY and
FRANK LONERGAN,
Attorneys for Petitioner,
534 Henry Bldg., Seattle, Wn.

State of Oregon,
County of Multnomah,—ss.

Thomas Johnson, being first duly sworn, on oath, deposes and says: That I am the petitioner above named; that I have read the foregoing petition, know the contents thereof, and believe the same to be true; that no previous application for a writ of habeas corpus and no previous application for writ of certiorari has been made.

THOMAS JOHNSON.

Subscribed and sworn to before me this 25th day of Feb., 1929.

N. R. CROUNSE,
Notary Public in and for the State of Oregon, Re-
siding at Portland, Oregon.

My commission expires 9/20/1930. [5]

Service accepted this 28th day of Feb., 1929.

FORREST E. LITTLEFIELD,
Assistant U. S. Attorney.

Filed February 25, 1929. [6]

AND AFTERWARDS, to wit, on the 25th day of February, 1929, there was duly filed in said court, a writ of certiorari and the return thereon, in words and figures as follows, to wit: [7]

[Title of Court and Cause.]

WRIT OF CERTIORARI.

The President of the United States, to Honorable K. F. Frazer, United States Commissioner for the District of Oregon, and duly appointed and authorized by the District Court of the United States for the District of Oregon to act as commissioner under the laws of the United States, concerning the removal of defendants from one district to another, under the laws of the United States, GREETING:

For sufficient reasons shown by the petition of Thomas Johnson, sworn to on the 25th day of February, 1929, you are hereby commanded to certify and send to the District Court of the United States in and for the District of Oregon, in the 9th Circuit, on the 28th day of February, 1929, at 10 o'clock in the morning of that day, or as soon thereafter as counsel can be heard, the proceedings concerning the matters described in and those to which reference is made in said petition, and concerning the application for commitment and removal of Thomas Johnson, together with the transcript of the testimony and other testimony offered orally at said hearing, the certified copy of the indictment from

the Northern Division of the Western District of Washington, and all other evidence offered and received before you, both documentary and orally, and received by you as evidence, as fully and entirely as it remains before you, by whatsoever names and parties may be called in said proceedings, together with this writ, that said Court may cause to be done what of right ought to be done in the premises.

JOHN H. McNARY,
United States District Judge for the District of
Oregon. [8]

[Title of Court and Cause.]

FINAL REPORT.

Removal Complaint.

- Jan. 18 Filed complaint, no warrant,—defendant present.
- Jan. 18 Hearing, defendant before Commissioner and demands hearing, neither party ready, witnesses for United States not in Oregon, on motion of United States ordered hearing continued to Feb. 9, 1929, bail fixed at \$2,500.00, recognition with sureties furnished.
- Feb. 9 Hearing, defendant present and by C. T. McKinney, of counsel, United States appearing by F. E. Littlefield, Asst. United States Attorney, testimony heard, and at close of Government's case defendant moved to dismiss complaint, motion denied, and thereupon

proceeded to hear testimony on behalf of defendant, thereupon United States moved for a continuance of hearing to secure attendance of a material witness who was absent from the State of Oregon,—ordered hearing continued to February 16, 1929, same bail.

- Feb. 16 Hearing resumed, defendant present and by counsel, testimony heard, the case submitted on authorities.
- Feb. 25 Hearing resumed, defendant present and by counsel, ordered that defendant be held to answer to U. S. District Court for Western District of Washington, at Seattle, Wash., bail \$2,500.00, committed in default of bail.
- Feb. 25 I tender herewith complaint, recognizance for appearance before court, Government's Exhibit "A", and final *mittimus*, also recognizance to answer to writ of habeas corpus, and transcript of testimony.

Witnesses sworn for United States:

R. E. HERRICK, Portland, Or.

B. F. HARGROVE.

Sureties on Recog.:

ESTELLE M. BERRY, Portland, Or.

L. L. PORTER, West Linn, Or.

[Seal]

K. F. FRAZER,

United States Commissioner. [9]

[Title of Court and Cause.]

REMOVAL COMPLAINT.

Before me, K. F. Frazer, United States Commissioner for the District of Oregon, personally appeared this 18th day of January, 1929, Forrest E. Littlefield, Assistant United States Attorney for the District of Oregon, who, being first duly sworn, alleges on information and belief:

That J. Arthur Boyd, *alias* Cook, Charles E. Broughton, Peter Poulas, *alias* Peter Blaxas, W. C. Miller, Clifford Perry, George H. Fidnell and Thomas Johnson, on or about the 1st day of December, 1927, at Seattle, in the Northern Division, Western District of Washington, did then and there knowingly, wilfully, unlawfully, and feloniously combine, conspire, confederate and agree together, and with each other, and together with sundry and divers other persons to the affiant unknown, to commit certain offenses against the United States, that is to say:

(a) To possess, transport, import, conceal, purchase, furnish and deliver intoxicating liquor, to wit: whiskey, gin, brandy, rum and wine, then and there containing more than one-half of one per cent of alcohol by volume, and fit for use and designed and intended for use for beverage purposes, and maintain common nuisances in violation of sections 3, 6 and 21 of Title II of the provisions of the Act of Congress passed October 28, 1919, and known as the National Prohibition Act; all of which was

done with the willful, unlawful and felonious intent to violate the aforesaid provisions of the aforesaid act.

(b) To knowingly, wilfully, unlawfully and feloniously and with intent in them, and each of them, to defraud the revenue of the United States, smuggle and clandestinely introduce into the United States from a foreign country, to wit: British Columbia, in the Dominion of Canada, [10] certain prohibited merchandise which should have been invoiced, to wit: whiskey, gin, brandy and rum, a more particular description of the amount and kinds whereof being to the affiant unknown, without having obtained a permit for such importation from the Commissioner of Internal Revenue, the importation and introduction of said merchandise being prohibited by law, as the said conspirators, and each of them, then and there well knew, such smuggling and such clandestine introduction of such intoxicating liquors being contrary to the provisions of the Act of Congress passed September 21, 1922, known as the Tariff Act of 1922.

That it was then and there further the plan and purpose and object of said conspirators, and each of them, so conspiring together, as aforesaid, knowingly, wilfully, unlawfully and feloniously not to declare or report the entry and bringing in thereof of the said prohibited merchandise, to wit: the said intoxicating liquor as aforesaid, to the Collector of Customs for the Customs Collection District of Washington, or to any other officer of the United States Customs, as required by law, all of which

the said conspirators and each of them, then and there well knew was contrary to the Act of Congress passed September 21, 1922, known as the Tariff Act of 1922.

That said conspiracy was and is a continuing conspiracy, continuing from to wit: on or about the 1st day of December, 1927, to the time of the presentment of the indictment filed against said defendants.

OVERT ACTS.

That after the formation of the aforesaid conspiracy, and in pursuance thereof, and in order to effect the object of the aforesaid conspiracy, and for the purpose of executing said unlawful conspiracy and agreement, the hereinafter mentioned parties did certain overt acts, that is to say:

(1) Said J. Arthur Boyd, *alias* Cook, on or about the 9th day of December, 1928, within the Northern Division of the Western District of Washington, did then and there, in the city of Seattle, offer one Clifford Perry the sum of \$400 for the privilege of unloading whiskey from the Great Northern coach No. 900, at the King Street Terminal, in Seattle, Washington.

(2) Said J. Arthur Boyd, *alias* Cook, on or about the 21st day of December, 1928, within the Northern Division of the Western District of Washington, did then and there arrange with one Frank Bizbee to handle liquor [11] in passenger coaches of the Great Northern Railway from Vancouver, British Columbia, Canada, to Seattle, Washington.

(3) Said J. Arthur Boyd, *alias* Cook, on or about the 3d day of January, 1929, within the Northern Division of the Western District of Washington, did then and there make an engagement with one B. H. Hargrove, Jr., *alias* Ben Harris, for a meeting at the office of the said J. Arthur Boyd, *alias* Cook, at 1 o'clock in the afternoon of Friday, the 4th day of January, 1929, in Seattle Washington.

(4) The said J. Arthur Boyd, *alias* Cook, on or about the 7th day of January, 1929, within the Northern Division of the Western District of Washington, did then and there, through one Clifford Perry, pay to one Frank Bisbee, the sum of \$50 for the privilege of unloading liquor in the King Street Terminal Yards of the Great Northern Railway in Seattle, Washington.

(5) The said Charles E. Broughton, on or about the 7th day of January, 1929, within the Northern Division of the Western District of Washington, did then and there spot and place one Great Northern coach, No. 911, on track #4 at the south end of the King Street Terminal coach yard of the Great Northern Railway, in Seattle, Washington.

(6) The said Charles E. Broughton, on or about the 8th day of January, 1929, within the Northern Division of the Western District of Washington, did then and there assist one Peter Poulas, *alias* Peter Blaxas in unloading whiskey from the vestibule of coach No. 911, at the south end of the King Street Terminal coach yards of the Great Northern Railway, in Seattle, Washington.

(7) The said W. C. Miller, from the 1st day of June, 1928, and up to the 1st day of October, 1928, within the Northern Division of the Western District of Washington, at Seattle, Washington, did then and there work with one Charles E. Broughton at the Great Northern Terminal Railway yards from the hour of 10:45 o'clock at night until 6:30 o'clock the following morning.

(8) The said W. C. Miller, during the months of June, July, August and September, 1928, within the Northern Division of the Western District of Washington, at Seattle, Washington, did then and there receive from one J. Arthur Boyd, whiskey and money for spotting and placing cars on tracks of the Great Northern Railway at the King Street Terminal yards, which cars were then and there loaded with liquor. [12]

(9) The said Peter Poulas, *alias* Peter Blaxas, on or about the 5th day of January, 1929, between 2 o'clock in the afternoon and 8 o'clock in the evening, within the Northern Division of the Western District of Washington, at Seattle, Washington, did then and there guard and watch over one Great Northern coach, No. 900, standing on the house track at the north end of the coach yard of the Great Northern Railway at the King Street terminal of said Great Northern Railway.

(10) The said Peter Poulas, *alias* Peter Blaxas, on or about the 7th and 8th days of January, 1929, within the Northern Division of the Western District of Washington, did then and there remove from the vestibule of Great Northern coach No.

900, at King Street Terminal, Seattle, Washington, 4 cases of whiskey.

(11) The said Clifford Perry, on or about the 10th day of December, 1928, at Seattle, Washington, within the Northern Division of the Western District of Washington, did then and there, in the King Street terminal of the Great Northern Railway, watch and guard over one Great Northern coach No. 900 standing on the rip track near Fourth Avenue and Holgate Street.

(12) The said Clifford Perry, on or about the 8th day of January, in the year 1929, within the Northern Division of the Western District of Washington, in Seattle, Washington, and within the jurisdiction of this court, did then and there receive from one Peter Poulas, *alias* Peter Blaxas, one case of whiskey, containing more than one-half of one per cent of alcohol by volume, fit for beverage purposes.

(13) The said George N. Finnell, on or about the 17th day of December, 1928, at Seattle, within the Northern Division of the Western District of Washington, did meet and carry on a conversation and talk with one J. Arthur Boyd, *alias* Cook, in the King Street depot.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT TWO.

That J. Arthur Boyd, *alias* Cook, Charles E. Broughton, Peter Poulas, *alias* Peter Blaxas, W. C. Miller, Clifford Perry, George N. Finnell and Thomas Johnson, and each of them, on or about

the 7th day of January, 1929, at Seattle, in the Northern Division of the Western District of Washington, within the Customs Collection District of [13] Washington, did then and there knowingly, wilfully, unlawfully and fraudulently receive, buy and conceal, and did facilitate the transportation and concealment of said intoxicating liquors containing more than one-half of one per cent of alcohol by volume and being fit for use for beverage purposes, to wit: approximately 12 cases of whiskey, which liquor had lately theretofore been imported and brought into the United States from a foreign country, to wit: from British Columbia, in the Dominion of Canada, contrary to law; that is to say, without submission to inspection by any officer of the customs of the United States and without the payment of any duty thereon, all of which the said J. Arthur Boyd, *alias* Cook, Charles E. Broughton, Peter Poulas, *alias* Blaxas, W. C. Miller, Clifford Perry, George N. Finnell and Thomas Johnson, and each of them, then and there well knew; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

That on the 16th day of January, 1929, an indictment was duly filed in the District Court of the United States for the Western District of Washington, Northern Division, charging the defendants above named with the commission of the above-mentioned offenses.

That a bench warrant was duly issued on said indictment for the defendant, Thomas Johnson, and

has not been served, for the reason that said defendant is now sojourning in the State and District of Oregon.

WHEREFORE, this complainant prays that said Thomas Johnson may be apprehended and further dealt with according to law.

FORREST E. LITTLEFIELD,
Assistant United States Attorney.

Subscribed and sworn to before me this 18th day of January, 1929.

[Seal]

K. F. FRAZER,
United States Commissioner.

Filed January 18, 1929.

K. F. FRASER,
U. S. Commr., [14]

United States District Court, Western District of
Washington, Northern Division.

November, 1928, Term.

No. 40,011.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. ARTHUR BOYD, *alias* COOK, CHARLES E.
BROUGHTON, PETER POULAS, *alias*
PETER BLAXAS, W. C. MILLER, CLIF-
FORD PERRY, GEORGE N. FINNELL,
THOMAS JOHNSON,

Defendants.

INDICTMENT.

United States of America,
Western District of Washington,
Northern Division,—ss.

Vio. Sec. 37, P. C. Conspiracy to Vio. the Act of
Oct. 28, 1919, known as the National Prohibi-
tion Act; and Conspiracy to violate the Act of
Sept. 21, 1922, known as the Tariff Act and
Vio. of Sec. 593 of the Tariff Act of 1922.

The Grand Jurors of the United States of Amer-
ica, being duly selected, impaneled, sworn and
charged to inquire within and for the Northern
Division of the Western District of Washington,
upon their oaths present:

COUNT I.

That J. ARTHUR BOYD, *alias* COOK,
CHARLES E. BROUGHTON, PETER-POULAS,
alias PETER BLAXAS, W. C. MILLER, CLIF-
FORD PERRY, GEORGE N. FINNELL and
THOMAS JOHNSON, whose true and full names
are to the Grand Jurors unknown, and each of them,
on or about the first day of December, in the year
of our Lord one thousand nine hundred twenty-
seven, at Seattle, Washington, within the Northern
Division of the Western District of Washington,
and within the jurisdiction of this Court then and
there being, did then and there knowingly, wilfully,
unlawfully, and feloniously combine, conspire, con-
federate and agree together, and with each other,
and together with sundry and divers other persons

to the Grand Jurors unknown, to commit certain offenses against the United States, that is to say:

(a) To possess, transport, import, conceal, purchase, furnish and deliver intoxicating liquor, to wit: whiskey, gin, brandy, rum and wine, then and there containing more than one-half of one per cent of alcohol [15] by volume, and fit for use and designed and intended for use for beverage purposes, and maintain common nuisances in violation of Sections three (3), Six (6) and Twenty-one (21) of Title Two (II) of the provisions of the Act of Congress passed October 28, 1919, and known as the National Prohibition Act; all of which was done with the wilful, unlawful and felonious intent to violate the aforesaid provisions of the aforesaid Act.

(b) To knowingly, wilfully, unlawfully and feloniously and with the intent in them and each of them, to defraud the revenue of the United States, smuggle and clandestinely introduce into the United States from a foreign country, to wit: British Columbia, in the Dominion of Canada, certain prohibited merchandise which should have been invoiced, to wit: whiskey, gin, brandy and rum, a more particular description of the amount and kinds whereof being to the Grand Jurors unknown, without having obtained a permit for such importation from the Commissioner of Internal Revenue, the importation and introduction of said merchandise being prohibited by law, as the said conspirators, and each of them, then and there well knew, such smuggling and such clandestine introduction of such intoxicating liquors being contrary to the

provisions of the Act of Congress passed September 21, 1922, known as the Tariff Act of 1922.

That it was then and there further the plan and purpose and object of said conspirators, and each of them, so conspiring together, as aforesaid, knowingly, wilfully, unlawfully and feloniously not to declare or report the entry and bringing in thereof of the said prohibited merchandise, to wit: the said intoxicating liquor as aforesaid, to the Collector of Customs for the Customs Collection District of Washington, or to any other officer of the United States Customs, as required by law, all of which the said conspirators, and each of them, then and there well knew was contrary to the Act of Congress passed September 21, 1922, known as the Tariff Act of 1922.

That said conspiracy was and is a continuing conspiracy, continuing from, to wit: on or about the 1st day of December, in the year of our Lord one thousand nine hundred and twenty-seven, to the time of the presentment of this indictment. [16]

OVERT ACTS.

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present, that after the formation of aforesaid conspiracy, and in pursuance thereof, and in order to effect the object of the aforesaid conspiracy, and for the purpose of executing said unlawful conspiracy and agreement, the hereinafter mentioned parties did certain overt acts; that is to say:

- (1) Said J. ARTHUR BOYD, *alias* COOK, on

or about the ninth day of December, in the year of our Lord one thousand nine hundred and twenty-eight, within the Northern Division of the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there, in the city of Seattle, offer one Clifford Perry the sum of four hundred dollars for the privilege of unloading whiskey from Great Northern coach Number Nine Hundred, at the King Street Terminal in Seattle, Washington.

(2) Said J. ARTHUR BOYD, *alias* COOK, on or about the twenty-first day of December, in the year of our Lord one thousand nine hundred and twenty-eight, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there arrange with one FRANK BISBEE to handle liquor in passenger coaches of the Great Northern Railway from Vancouver, British Columbia, Canada, to Seattle, Washington.

(3) Said J. ARTHUR BOYD, *alias* COOK, on or about the third day of January, in the year of our Lord one thousand nine hundred and twenty-nine, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there make an engagement with one B. H. HARGROVE, Jr., *alias* BEN HARRIS, for a meeting at the office of the said J. ARTHUR BOYD, *alias* COOK, at one o'clock in the afternoon of Friday, the fourth day of January, in the year of our Lord

one thousand nine hundred and twenty-nine, in Seattle, Washington.

(4) The said J. ARTHUR BOYD, *alias* COOK, on or about the seventh day of January, in the year of our Lord one thousand nine hundred and twenty-nine, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court then and there being, did then and there, through one Clifford Perry, pay to one Frank Bisbee, the sum of fifty dollars [17] for the privilege of unloading liquor in the King Street Terminal Yards of the Great Northern Railway in Seattle, Washington.

(5) The said CHARLES E. BROUGHTON, on or about the seventh day of January, in the year of our Lord one thousand nine hundred and twenty-nine, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court then and there being, did then and there spot and place one Great Northern coach, number nine hundred eleven, on track number four at the South end of the King Street Terminal Coach yard of the Great Northern Railway, in Seattle, Washington.

(6) The said CHARLES E. BROUGHTON, on or about the eighth day of January, in the year of our Lord one thousand nine hundred and twenty-nine, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there assist one PETER POULAS, *alias* PETER BLAXAS in unloading whiskey from the vestibule

of coach number nine hundred eleven, at the south end of the King Street Terminal coach yards of the Great Northern Railway, in Seattle, Washington.

(7) The said W. C. MILLER, from the first day of June, in the year of our Lord one thousand nine hundred and twenty-eight, and up to the first day of October, in the year of our Lord one thousand nine hundred and twenty-eight, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court, at Seattle, Washington, then and there being, did then and there work with one Charles E. Broughton at the Great Northern Terminal Railway yards from the hour of ten forty-five o'clock at night until six-thirty o'clock the following morning.

(8) The said W. C. MILLER, during the months of June, July, August and September, in the year of our Lord one thousand nine hundred and twenty-eight, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court, at Seattle, Washington, then and there being, did then and there receive from one J. ARTHUR BOYD, whiskey and money for spotting and placing cards on tracks of the Great Northern Railway at the King Street Terminal yards, which cars were then and there loaded with liquor. [18]

(9) The said PETER POULAS, *alias* PETER BLAXAS, on or about the fifth day of January, in the year of our Lord one thousand nine hundred and twenty-nine, between two o'clock in the afternoon and eight o'clock in the evening, within the Northern Division of the Western District of

Washington and within the jurisdiction of this court, at Seattle, Washington, then and there being, did then and there guard and watch over one Great Northern coach number nine hundred, standing on the house track at the north end of the coach yard of the Great Northern Railway at the King Street terminal of said Great Northern Railway.

(10) The said PETER POULAS, *alias* PETER BLAXAS, on or about the seventh and eighth days of January, in the year of our Lord one thousand nine hundred and twenty-nine, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there remove from the vestibule of Great Northern coach number nine hundred, at the King Street Terminal, Seattle, Washington, four (4) cases of whiskey.

(11) The said CLIFFORD PERRY, on or about the tenth day of December, in the year of our Lord one thousand nine hundred and twenty-eight, at Seattle, Washington, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court then and there being, did then and there in the King Street terminal of the Great Northern Railway, watch and guard over one Great Northern coach number nine hundred standing on the rip track near Fourth Avenue and Holgate Street.

(12) The said CLIFFORD PERRY, on or about the eighth day of January, in the year of our Lord one thousand nine hundred and twenty-nine, within the Northern Division of the Western Dis-

trict of Washington, in Seattle, Washington, and within the jurisdiction of this court, then and there being, did then and there receive from one PETER POULAS, *alias* PETER BLAXAS, one case of whiskey, containing more than one-half of one per cent of alcohol by volume, fit for beverage purposes.

(13) The said GEORGE N. FINNELL, on or about the seventeenth day of December, in the year of our Lord one thousand nine hundred and twenty-eight, at Seattle, Washington, within the Northern Division of the Western District [19] of Washington, and within the jurisdiction of this court, then and there being, did meet and carry on a conversation and talk with one J. ARTHUR BOYD, *alias* COOK, in the King Street depot.

All of which is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, on their oaths aforesaid do further present:

COUNT II.

That J. ARTHUR BOYD, *alias* COOK, CHARLES E. BROUGHTON, PETER POULAS, *alias* PETER BLAXAS, W. C. MILLER, CLIFFORD PERRY, GEORGE N. FINNELL and THOMAS JOHNSON, whose true and full names are to the Grand Jurors unknown, and each of them, on or about the seventh day of January, in the year of our Lord one thousand nine hundred and twenty-nine, at Seattle, Washington, in the Northern Division of the Western District of Washington, within

the Customs Collection District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, wilfully, unlawfully and fraudulently receive, buy and conceal, and did facilitate the transportation and concealment of said intoxicating liquors containing more than one-half of one per cent of alcohol by volume and being fit for use for beverage purposes, to wit:

Approximately twelve (12) cases of whiskey a more particular description of the amount and kind thereof being to the Grand Jurors unknown, which liquor had lately theretofore been imported and brought into the United States from a foreign country, to wit: from British Columbia, in the Dominion of Canada, contrary to law; that is to say, without submission to inspection by any officer of the Customs of the United States and without the payment of any duty thereon, all of which the said J. ARTHUR BOYD, *alias* COOK, CHARLES E. BROUGHTON, PETER POULAS, *alias* BLAXAS, W. C. MILLER, CLIFFORD PERRY, GEORGE N. FINNELL and THOMAS JOHNSON, and each of them, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ANTHONY SAVAGE,

United States Attorney.

TOM DeWOLFE,

Assistant United States Attorney.

[Endorsed]: A true bill.

H. C. BELL,
Foreman Grand Jury.
ANTHONY SAVAGE,
U. S. Attorney. [20]

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in Open Court, in the Presence of the Grand Jury, and Filed in the U. S. District Court. Jan. 16, 1929. [21]

No. 40,011.

United States of America,
Western District of Washington,
Northern Division,—ss.

BENCH WARRANT.

(Indictment.)

The President of the United States to the Marshal of the United States of America, for the Western District of Washington, his deputies, or or any or either of them, GREETING:

WHEREAS, at a District Court of the United States of America, for the Western District of Washington, begun and held at the City of Seattle, within and for the District aforesaid, on the 16th day of January in the year of our Lord one thousand nine hundred and twenty-nine the Grand Jurors in and for the said district, returned into the said district court a true bill of indictment against THOMAS JOHNSON, for violation Sec.

37 P. C., Consp. vio. National Prohibition Act, and Consp. to violate Act Sept. 21, 1922, known as the Tariff Act; and vio. Sec. 593 Tariff Act of 1922.

As by the said bill of indictment, now remaining on file and of record in said court, will more fully appear; to which bill of indictment the said THOMAS JOHNSON has not yet appeared or pleaded;

NOW, THEREFORE, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said THOMAS JOHNSON and him bring before the said court, at the United States District courtroom, in the city of Seattle, to answer the bill of indictment aforesaid.

WITNESS: The Honorable JEREMIAH NET-
ERER, Judge of the said District Court, and the
seal thereof, at the city of Seattle, this 16th day of
January, A. D. 1929.

[Seal]

ED. M. LAKIN,
Clerk.

By T. W. Egger,
Deputy Clerk.

ANTHONY SAVAGE,
United States District Attorney.

Western District of Washington,—ss.

I hereby certify and return, that on the 16th day of Jan., 1929, I received the within Bench Warrant and that after diligent search, I am unable to find

the within named defendants Thomas Johnson within my district.

E. B. BENN,
United States Marshal.
By A. B. MILLER,
Deputy United States Marshal. [22]

[Endorsed]: No. 40,011. In United States District Court. Western District of Washington. United States of America vs. Thomas Johnson. Bench warrant. (Indictment.) Bail Fixed at \$2,500.00. Attest: Ed. M. Lakin, Clerk. By T. W. Egger, Deputy.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify that I have compared the foregoing copy with the original indictment, bench warrant and marshal's return thereon in the foregoing entitled cause, now on file and of record in my office at Seattle, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court, this 5th day of February, 1929.

[Seal]

ED. M. LAKIN,
Clerk.

By T. W. Egger,
Deputy Clerk.

[Endorsed]: No. 40,011. In the District Court of the United States for the Western District of

Washington. U. S. A. vs. Thomas Johnson. Certified Copy of (see inside). [23]

RECOGNIZANCE FOR APPEARANCE.

United States of America,
District of Oregon,
———— Division,—ss.

BE IT REMEMBERED, That on this 18th day of January, A. D. 1929, before me, K. F. Frazer, a United States Commissioner for the said District of Oregon, ——— division, personally came Thomas Johnson, principal, and Estelle M. Berry, and L. L. Porter, sureties and jointly and severally acknowledged themselves to owe the United States of America the sum of twenty-five hundred dollars, to be levied on their goods and chattels, land and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such, that if the said Thomas Johnson, principal, shall personally appear before the Commissioner of the District Court of the United States in and for the District of Oregon on the 9th day of February, 1929, at 10:30 A. M., to be begun and held at the city of Portland, and from day to day and from time to time thereafter, until finally discharged therefrom, then and there to answer the charge that on or about the ——— day of ———, 19——, within said district in violation of Section 37 Federal Penal Code, he did unlawfully conspire together with other persons to commit an offense against the United States, contrary to the form of the statute in such cases

made and provided and against the peace and dignity of the United States of America, and then and there abide the judgment of the said Court, and not depart without leave thereof, then this recognizance to be void, otherwise to remain in full force and virtue.

THOMAS JOHNSON. [Seal]

ESTELLE M. BERRY. [Seal]

L. L. PORTER. [Seal]

Taken and acknowledged before me on the day and year first above written.

[Seal]

K. F. FRAZER,

United States Commissioner as Aforesaid.

United States of America,

District of Oregon,

— Division,—ss.

AFFIDAVIT OF FIRST SURETY.

Estelle M. Berry, a surety on the annexed recognizance, being duly sworn, deposes and says that she resides at 725 E. Main in the city of Portland in said district, that she is a freeholder in the District of Oregon, that she is worth the sum of twenty-five hundred dollars over and above all her just debts and liabilities, in property subject to execution and sale, and that her property consists of: located at

(Affiant's signature) ESTELLE M. BERRY.

Sworn to and subscribed before me, this 18th day of January, A. D. 1929.

[Seal]

K. F. FRAZER,

United States Commissioner as Aforesaid.

United States of America,
 District of Oregon,
 ———— Division,—ss.

AFFIDAVIT OF SECOND SURETY.

L. L. Potter, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at West Linn in the State of Oregon in said district, that he is a freeholder in the District of Oregon, that he is worth the sum of twenty-five hundred dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of:
 ———— located at ————

(Affiant's signature) L. L. POTTER.

Sworn to and subscribed before me, this 18th day of January, A. D. 1929.

[Seal] K. F. FRAZER,
 United States Commissioner as Aforesaid. [24]

L. L. Potter,
 Oregon City, Oregon,
 509-J-Oregon City.

160 A. land Columbia Co. (timber)	25,000
1/2 Int. 600 A. land Lane Co.	10,000
280 A. improved land Jefferson Co., Oregon	5,000
All timber on the SW1/4SW1/4 Sec. 6; NW1/4 and the NW1/4 of SW1/4 of Sec. 7; all Sec. 18, and the NW1/4 Sec. 13, T. 7 N., R. 6 W., consisting of 1500 acres more or less VALUED AT	25,000

\$65,000

On bonds	
Krebs	3000
Case	3000
Sparks	1500
Anderson	1500
Brown	1500
	<hr/>
	\$10500

L. L. PORTER.

Estelle M. Berry,
725 East Main Street, Portland,
East 9721—Broad. 8965.

40 acre plated land Clackamas Co.	8000
Lot 8, Blk. 1, Salisbury, Portland	8500
Lot 8, Blk. 1, Parkway and Lot 6, Blk. 3, Cumberland, Portland	1500
Lots 9, 10, and 11, with improvements, Clackamas Co., Oregon (Deer Lodge)	4000
40 acres land near Molalla, Clackamas Co.	1000
Lot 14, Bodleys Addt. East Portland	3500
320 acres land Sec. 16, Tp. 25, R. 18, Lake County, Oregon	3500
	<hr/>
	\$30000

On Bonds	
Sparks	1500
Anderson	1500
Mayes	1000
Brown	1500
Wilson	1500
McElvaney	1000

Rowaland	1000
Krebs	3000
Case	3000

\$15000

ESTELLE M. BERRY. [25]

[Title of Court and Cause.]

TESTIMONY.

BE IT REMEMBERED that the above-entitled matter came on for hearing before Hon. K. F. Frazer, United States Commissioner, in Room 318 Old Postoffice Building, Portland, Oregon, beginning on Saturday, February 9th, 1929, 10:00 o'clock A. M.

APPEARANCES:

- F. E. LITTLEFIELD, Deputy United States Attorney, Appearing for the Government;
 C. T. McKINNEY and FRANK LONERGAN, Appearing for the Defendant.

The COMMISSIONER.—United States *versus* Thomas Johnson, asking the removal to Seattle.

Mr. McKINNEY.—If your Honor please, at this time I would like the record to show that the defendant enters a plea of not guilty and denies that he is the party charged in the indictment in the Western District of Washington.

The COMMISSIONER.—All right, note a plea and denial.

Mr. LITTLEFIELD.—The Government will offer certified copy of the indictment upon which the charge is based.

The COMMISSIONER.—You are acquainted with it?

Mr. McKINNEY.—I am acquainted with it. I object to the introduction of the indictment in evidence upon the ground that under the federal law the indictment has no more force and effect than an affidavit would have as to the facts that would be proven. In other words, that this indictment must set out some facts against the defendant arrested in order to warrant his removal, and this indictment states nothing more than conclusions of the pleader or of the grand jury. And upon the further ground that there is no overt act set out in this information against this party.

The COMMISSIONER.—The indictment?

Mr. McKINNEY.—The indictment, yes. The indictment does not contain any overt act or allege any single fact upon which the Commissioner could find that there [27] would be probable cause to remove this man to a foreign jurisdiction.

The COMMISSIONER.—Yes. It will be admitted for what it is worth. It is rather long; I will not take time to search through it. If you can point out anything there—

(Document marked Government's Exhibit "A.")

Mr. LITTLEFIELD.—I will call Mr. Herrick for one question.

TESTIMONY OF R. E. HERRICK, FOR THE
GOVERNMENT.

R. E. HERRICK was thereupon produced as a witness in behalf of the Government, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. LITTLEFIELD.

Q. What is your occupation, Mr. Herrick?

A. Special agent, Bureau of Prohibition.

Q. Where is your place of duty?

A. Portland, Oregon.

Q. Do you know the defendant in this case, this man that sits here at the table? A. Yes, I do.

Q. Do you know what his name is?

A. Thomas Johnson.

Mr. LITTLEFIELD.—You may cross-examine.

Cross-examination by Mr. McKINNEY.

Q. Mr. Herrick, when have you seen this defendant before?

A. I have seen him possibly twenty or thirty occasions in the last year.

Q. Have you ever talked to him personally?

A. No, not until the day that he was arrested.

Q. Now the day that he was arrested where was he picked up, Mr. Herrick?

A. East Broadway, just a block or two the east side of the bridge. I don't know what intersection, what street crossing it was.

Q. You were in a car?

A. He was in a car, and Mr. Johnson, Deputy

(Testimony of R. E. Herrick.)

United States Marshal and Vern Williams, Federal Prohibition Agent, and myself were in another car.

Q. Now, when you arrested him whom did you say was with you, Williams?

A. Vern Williams.

Q. He was the one that talked to the defendant, was he not? I mean, he [28] first got out of the car?

A. No, it was Mr. Johnson, Deputy United States Marshal.

Q. Oh, Mr. Johnson got out of the car. I see. Up to that time you had never had any conversation with this defendant personally, had you?

A. No, I never had.

Q. And all you know about what this defendant's name is is hearsay, isn't it, what you have heard someone else say his name? That is generally how you come about the knowledge as to what his name was, isn't it?

A. Well, not just exactly, no.

Q. He never told you personally himself, did he?

A. No, he never did.

Mr. McKINNEY.—That is all.

The COMMISSIONER.—Mr. Herrick, do you know that he is the man named in this complaint? All that you said, I believe, in your testimony was that he was Tom Johnson. You know him to be Tom Johnson?

Mr. McKINNEY.—That is of your own knowledge now, Mr. Herrick.

(Testimony of R. E. Herrick.)

A. I am trying to figure this out so it will be plain enough to everybody. I know that this is the man that—

Mr. McKINNEY.—Well, now, I object to that. Will you please answer the question “yes” or “no.” Then if you have got some explanation to make I won’t mind it.

A. What was the question again?

The COMMISSIONER.—I asked if you had—I have forgotten just how I worded it,—anyhow, I wanted to know if you knew that this man you designate as Tom Johnson is the man named in this indictment or removal complaint here before us?

Mr. McKINNEY.—If you can answer that “yes” or “no.”

A. I can’t answer that “yes” or “no.”

Mr. McKINNEY.—Can you answer it “yes” or no” with an explanation of your answer?

A. Yes.

Mr. McKINNEY.—That is all I have got to ask.

The COMMISSIONER.—I think you might start and see what you have, if counsel don’t object.

Mr. McKINNEY.—That is all; I just wanted to know if he could answer “yes” or “no.” He says he could with an explanation. [29]

The COMMISSIONER.—Let’s hear this Mr. Herrick.

A. Well, this is the Mr. Johnson that is connected with the alleged acts that are set out in the indictment as to the other defendants. I am somewhat familiar with his activities in connection with

(Testimony of R. E. Herrick.)

the charges contained. However, I testified I have never talked with the man, although I have seen him on various occasions under circumstances in connection with the charges as set forth in the indictment to know to my own satisfaction, at least, that it is the same man that is referred to in the indictment.

Mr. McKINNEY.—I move to strike that as being a conclusion of this man predicated upon no facts at all. Is there any question you want to ask him?

Mr. LITTLEFIELD.—Yes.

Mr. McKINNEY.—Go ahead; don't let me interrupt.

The COMMISSIONER.—The motion to strike will be sustained.

Q. (By Mr. LITTLEFIELD.) Mr. Kerrick, when you arrested him did you ask him what his name was, anyone in your presence?

A. Yes.

Q. What did he say his name was?

A. He admitted that his name was Tom Johnson. Someone asked him, oh, as to his ranch and other things; nothing pertaining to this particular case, however.

Mr. LITTLEFIELD.—That is all, Mr. Herrick.

Recross-examination by Mr. McKINNEY.

Q. Did you hear this conversation, Mr. Herrick?

A. Which conversation?

Q. That you had with whoever—you said someone talked to him?

(Testimony of R. E. Herrick.)

A. Yes, he come up to the office.

Q. Up to the office afterwards, but you didn't ask him anything about his name up there, did you?

A. Why, yes, there was quite a bit of discussion about his name and his ranch, and the man that was tried for murder down there on his ranch, and quite a bit of conversation about his automobile license number that he had, and that is registered in his wife's name, I believe. He admitted the number.

Q. Did you appear before the Grand Jury in this case? A. No, I didn't.

Q. Then you weren't in Seattle before the grand jury at all, were you, Herrick?

A. No, I wasn't.

Q. What you say about this and he being the man wanted is your opinion about the [30] matter, isn't it, Herrick? You have no facts—

A. Yes, I have quite a bit of facts.

Q. Just a moment now, until I get through. You cannot say that this is the man the Grand Jury intended to indict if you didn't appear before that body, can you? A. Yes—well—

Q. Let's be fair about this.

A. I can by an explanation. It will be necessary to explain.

Q. I am talking about your own knowledge; I am concerned primarily with what you actually know yourself, not what you have an idea about or what you and the officers have talked about, or

(Testimony of R. E. Herrick.)

from other associated facts concluded upon; that is, of your own knowledge now you don't know that this is the man the grand jury indicted, do you?

A. I know this is the man that the Grand Jury should have indicted, at least.

Q. I am not asking that, Herrick. Answer the question.

A. Well, no, I cannot.

Q. You don't know it, that is right, do you? You don't know that of your own knowledge because you didn't appear before that body?

A. No, I don't know it of my own knowledge.

Q. You don't know what testimony was given before that body at all, do you?

A. I wasn't present, no.

Q. In any way, do you? A. No.

Q. You don't know that any evidence at all was ever offered to that grand jury against this defendant, do you? You don't know that of your own knowledge now?

A. The only way I can explain that—

Q. I want you to tell me what you know yourself? A. No, I don't know.

Mr. McKINNEY.—You don't know that. That is all.

Mr. LITTLEFIELD.—That is all.

(Witness excused.)

Mr. McKINNEY.—Do you rest?

Mr. LITTLEFIELD.—Yes.

Mr. McKINNEY.—Now, if your Honor please, I move for a dismissal and the discharge of this

defendant upon the ground that there has been no identification [31] of him and that there is no evidence upon which anybody could find that there is probable cause to remove him because of the insufficiency of the allegations of the indictment as a fact alleging document.

(Further discussion.)

The COMMISSIONER.—A legal attack on an indictment like this, sufficiency and so forth, I think should be made before the Court on demurrer.

Mr. McKINNEY.—I take it your Honor denies my motion.

The COMMISSIONER.—I think so.

DEFENDANT'S EVIDENCE.

TESTIMONY OF THOMAS JOHNSON, IN HIS OWN BEHALF.

THOMAS JOHNSON, the defendant herein, was thereupon produced as a witness in his own behalf, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY.

Q. Johnson, how long have you lived in Oregon?

A. Nine years.

Q. How old are you? A. Forty-one.

Q. Showing you a certified copy of an indictment returned in the Western District of Washington, I direct your attention to the names of one J. Arthur Boyd, *alias* Cook, Charles E. Broughton, Peter Poulas, *alias* Peter—I don't get that name very well—W. C. Miller, Clifford Perry, George N.

(Testimony of Thomas Johnson.)

Finnell, and ask you if you know either of those gentlemen? A. No, I don't.

Q. Have you ever been engaged at any time in a conspiracy with either of those people to violate the National Prohibition Act in the Western District of Washington? A. No, I haven't.

Q. Now, I will ask you if you know where you were on the 7th day of January, 1929?

A. Here in Portland.

Q. Portland, Oregon. Did you have anything to do with the importation or assist in unlawfully and fraudulently receiving, buying and concealing and facilitating the transportation and concealment of intoxicating liquors in the District of Washington on that date? A. No.

Q. Do you have any knowledge of any kind about the acts of the other people [32] charged in that count as to what they did? A. No.

Q. Either by hearsay or otherwise? A. No.

Q. Did you ever conspire with any of the named people here or other persons? A. No.

Q. To possess, transport, import, conceal, purchase, furnish and deliver intoxicating liquor, to wit, whiskey, gin, brandy, rum, and wine, between the first day of December, 1927, up to the present date? A. No.

Q. Have you any knowledge about why you should have been brought here to-day upon such a charge at all? A. No, I haven't.

Q. Do you know anything about it? A. No.

(Testimony of Thomas Johnson.)

Q. What has been your occupation within the last two years, Mr. Johnson? A. Hog raising.

Q. Whereabouts?

A. At Yankton, Oregon, in Columbia County.

Q. Do you own your own farm? A. Yes.

Q. How many hogs, to the best of your judgment, have you had upon that farm within that period of time; just a rough estimate, so the Court can have some idea what you have been engaged in?

A. Oh, I would say about 10,000.

Q. Have you raised any—

A. That is covering all the time.

The COMMISSIONER.—What length of time?

A. I should say covering two years.

Q. (By Mr. McKINNEY.) How large a farm have you out there; how many acres is there?

A. Eighty acres.

Q. You have had to have help out there on the farm? A. Yes.

Q. That has taken most of your time?

A. Yes. [33]

Q. And when was the last time, if you can remember, that you were in the State of Washington? In other words, have you been in the State of Washington within a period from December 1st, 1927, up to and including the 25th day of January, 1929? How many times have you been up there if at all?

A. I haven't been there at all in that time.

Q. You haven't been in the state? A. No.

The COMMISSIONER.—You haven't been in the state in the period of this indictment?

(Testimony of Thomas Johnson.)

A. No.

Q. (By Mr. McKINNEY.) Do you have any reason to know why one Tom Johnson has been indicted for such a conspiracy?

A. No, I haven't.

Q. Did you ever have any dealings with one Arthur Boyd of any kind or character? A. No.

Q. Or Charles Broughton? A. No.

Q. Or Peter Poulas? A. No.

Q. Or W. C. Miller? A. No.

Q. Or Clifford Perry? A. No.

Q. Or George N. Finnell? A. No.

Q. Did you ever conspire with anybody to violate the Tariff Act of 1922? A. No, sir.

Q. Do you know of any other people living in the city of Portland by the name of Tom Johnson or Thomas Johnson?

A. Yes, sir; I know another Tom Johnson.

Q. How many people by that name would you say lives in the city of Portland?

A. There is about two that I know of. I don't know if they are here now or not, but there is two: One lives out at 14th and Lovejoy and the other one lives over on Larrabee Street. [34]

Q. You have no knowledge upon which to predicate a defense to this case whatsoever?

A. No, sir.

Mr. McKINNEY.—You may examine.

Cross-examination by Mr. LITTLEFIELD.

Q. Would you say, Mr. Johnson, that you didn't know J. Arthur Boyd, *alias* Cook? A. No, sir.

(Testimony of Thomas Johnson.)

Q. You don't know him? A. No, sir.

Q. Do you know Charles A. Broughton?

A. No, sir.

Q. Do you know Peter Poulas, *alias* Peter Blaxas? A. No, sir.

Q. Do you know W. C. Miller? A. No, sir.

Q. Do you know Clifford Perry? A. No, sir.

Q. Do you know George N. Finnell?

A. No, sir.

Mr. McKINNEY.—Of course, you mean previous to this indictment? Is that what you mean, previous to the time you found out that you had been arrested?

A. Yes, sir.

Q. (By Mr. LITTLEFIELD.) Do I understand by that that you know these men now and didn't then?

A. Beg pardon?

Q. Do I understand by that that you know these men now and you didn't before this indictment was returned? A. I don't even know them now.

Q. Now you say you weren't in Seattle between December 1st and January 25th?

Mr. McKINNEY.—Well, I set that date arbitrarily, Mr. Littlefield. I meant to say the date the indictment was returned. I think it was returned somewhere along in the latter part of January, 1929. That was all.

Mr. LITTLEFIELD.—That is correct. [35]

Q. But were you in Seattle immediately prior to December 1st, 1927? A. No, sir.

(Testimony of Thomas Johnson.)

Q. Huh? A. No, sir.

Q. When was the last time you were in Seattle—

A. You say prior to what date?

Q. December 1st, 1927?

A. December 1st, 1927?

Q. Yes. A. December 1st, 1927, no, sir.

Q. When was the last time you were in Seattle before this indictment was returned?

A. Oh, I can't remember. I guess it has been about—you said the last time I was there before that indictment was returned?

Mr. McKINNEY.—No, he said 1927. That is a year and a month ago.

A. The last time I was there before what date in 1927?

Q. (By Mr. LITTLEFIELD). The question I asked you was the last time you were in Seattle before this indictment was returned.

A. Candidly I can't remember. It has been quite a while ago. I can't remember. It has been some time ago.

Q. Well, how long ago? A. Over two years.

Q. Over two years ago? A. Yes.

Q. You are positive about that, are you?

A. Yes, sir.

Q. You haven't been in Seattle for two years prior to the date this indictment was returned?

A. Yes, sir.

Q. You are sure it has been at least that long?

A. Yes, sir.

Q. And you are also quite positive that you don't

(Testimony of Thomas Johnson.)

know any of these defendants that are named here with you? A. No, sir.

Q. Do you know any of these defendants by name? A. No, sir.

Q. Do their names mean anything to you? [36]

A. Do I know them by name?

Q. Yes.

A. I don't know them; no, sir, I don't know them.

Q. Well now, isn't it a fact that on various occasions that you have held telephone conversations with Charles E. Broughton? A. No, sir.

Q. Talked to him over the phone? A. No, sir.

Q. From here to Seattle? A. No, sir.

Q. You never did talk to him on the phone?

A. No, sir.

Q. And you were not up—are you willing to swear under oath here that you were not in Seattle on or about December 1st, 1927, and were down at the railroad yards there in conversation with some of these defendants? A. Yes, sir.

Q. You are willing to swear to that under oath?

A. Yes, sir.

Q. Have you ever talked to any of these men over the phone? A. No, sir.

Q. Do you know Emmett Boyd? A. No, sir.

Q. Never had any liquor dealings with him?

Mr. McKINNEY.—Just a minute. I object to that. Emmett Boyd is not named in this indictment. He is not charged with conspiracy with somebody else. Let us stick to the issues.

Mr. LITTLEFIELD.—I know he is not named

(Testimony of Thomas Johnson.)

in the indictment, but the indictment alleges that these defendants together with other persons to the Grand Jury unknown conspired.

The COMMISSIONER.—You make your question complete then and we will rule on it. That is a preliminary question, isn't it?

Mr. LITTLEFIELD.—Yes. I asked him if he knew one Emmett Boyd, brother of the defendant J. Arthur Boyd.

Mr. McKINNEY.—I object to that. He is not named as one of them. There is no showing here that the grand jury—he testified before he didn't know who J. Arthur Boyd was. He cannot come on with an unknown conspirator [37] unless it can be shown that they didn't know him.

Mr. LITTLEFIELD.—No, that is not the rule.

Mr. McKINNEY.—That absolutely is the rule.

Mr. LITTLEFIELD.—We don't have to show that the Grand Jury didn't know him. It will be up to you to show that they did.

The COMMISSIONER.—I will hear the question and take the testimony.

Mr. McKINNEY.—Answer the question.

A. No, I don't know him.

Q. (By Mr. LITTLEFIELD.) You never had any discussion with him then about liquor either?

Mr. McKINNEY.—I object to that, as to whether he had any discussion with J. Arthur Boyd—

The COMMISSIONER.—He says he don't know him.

Mr. McKINNEY.—That is what I say, your

(Testimony of J. Arthur Boyd.)

Honor. There is no evidence here at all, he is cross-examining him on something that he hasn't even put in his indictment.

Mr. LONERGAN.—I suggest he has no right to go on an excursion here, your Honor.

The COMMISSIONER.—I think it is an improper question from the fact that he says he don't know him.

Mr. LITTLEFIELD.—All right, if he says he don't know him. We will let it go at that. That is all.

Mr. McKINNEY.—That is all, Mr. Johnson.
(Witness excused.)

TESTIMONY OF J. ARTHUR BOYD, FOR DEFENDANT.

J. ARTHUR BOYD was thereupon produced as a witness in behalf of the defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY.

Q. Mr. Boyd, where is your place of residence?

A. Seattle.

Q. How long have you lived in Seattle?

A. About fifteen years off and on.

Q. Are you one of the defendants named in the indictment, J. Arthur Boyd, which has been introduced here in evidence? A. I am.

Q. I will ask you if you are acquainted with one Thomas Johnson? [38] A. I am not.

Q. I will ask you if you ever at any time con-

(Testimony of J. Arthur Boyd.)

spired in the Western District of Washington to violate the National Prohibition Act or the Tariff Act of 1922 with one Thomas Johnson?

A. I did not.

Q. I will ask you if you ever at any time conspired with one Charles E. Broughton to violate the National Prohibition Act and the Tariff Act of 1922? A. I did not.

Q. During the period from December 1st, 1927, up to and including the latter part of January, 1929? A. No, sir.

Q. During that period of time? A. No, sir.

Q. Did you at any time ever see the person called Tom Johnson and during that period of time?

A. Not to my knowledge.

Q. Did you ever have any conversation with him at any place about intoxicating liquors of any kind?

A. I did not.

Q. Did you ever at any time conspire with one Charles E. Broughton to violate the National Prohibition Act or the Tariff Act of 1922? A. No.

Q. Or with one Peter Poulas? A. No.

Q. Or one W. C. Miller? A. No.

Q. Or one Clifford Perry? A. No.

Q. Or one George H. Finnell? A. No.

Q. Did you on the 7th day of January, 1929, at the city of Seattle in the Northern Division of the Western District of Washington, within the Customs Collection District of Washington and within the jurisdiction of this court, did you or did one Tom Johnson aid or assist you or any of the other

(Testimony of J. Arthur Boyd.)

persons I have named here, to your knowledge, in receiving, buying and concealing [39] and facilitating the transportation of intoxicating liquor at that time? Did you ever work with him or do anything of that kind? A. No.

Q. Do you know anything about any whiskey that might have been or is alleged to have been transported on that particular day in 1929, so far as Tom Johnson is concerned?

A. Not as far as Mr. Johnson or any of the other gentlemen that is in the indictment with me on that.

Q. What business have you been engaged in in the City of Seattle the last year and a half?

A. In the bond business.

Q. At what address? A. 321 Yesler.

Q. Previous to that time what business had you been engaged in?

A. I was in the garage business.

Q. Where? A. Seattle.

Q. Did you ever have any kind of connection, business connection of any kind, with one Thomas Johnson? A. No, sir.

Mr. McKINNEY.—That is all.

Cross-examination by Mr. LITTLEFIELD.

Q. As I understand your testimony, Mr. Boyd, you don't know any of these other defendants?

A. I don't know any of the defendants, no.

Q. You don't know any of them?

A. I know one of them, yes.

(Testimony of J. Arthur Boyd.)

Q. Which one of them do you know?

A. Mr. Perry.

Q. Mr. Perry? A. Yes.

Q. You deny that you conspired with any of these defendants in here?

A. Except Mr. Perry; I know Mr. Perry, I said,

Q. Well then, let's see. You say then this conspiracy was confined to you and Mr. Perry, is that the idea? [40]

Mr. McKINNEY.—He didn't say he conspired with him. He said he knew him.

A. I didn't say that, no.

Mr. McKINNEY.—He never conspired with any of them.

Q. (By Mr. LITTLEFIELD.) You didn't conspire with any of these men named in the indictment? A. No.

Mr. LITTLEFIELD.—I think you asked him, didn't you, about the second count?

Mr. McKINNEY.—Yes.

Q. (By Mr. LITTLEFIELD.) You live in Seattle, do you, Mr. Boyd? A. Sir?

Q. You live in Seattle? A. I do.

Q. How long have you lived there?

A. Oh, about the last fifteen years.

Q. Fifteen years?

A. Fifteen years, I guess; something like that.

Q. And what business did you say you were engaged in?

A. I was in the garage business. I am in the bond business now.

(Testimony of J. Arthur Boyd.)

Q. What business were you engaged in from December, 1927, until the date of the return of this indictment? A. December, 1927?

Q. Yes.

A. I was in the bond business. And also Mr. Herrick, he knows me quite well; he can tell you about me personally. I don't like these bum raps.

Mr. LITTLEFIELD.—That is all.

Q. (By Mr. McKINNEY.) Mr. Boyd, you came down here at my request? A. I did.

Mr. McKINNEY.—That is all.

(Witness excused.)

TESTIMONY OF CHARLES E. BROUGHTON, FOR DEFENDANT.

CHARLES E. BROUGHTON was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY.

Q. Broughton, where do you live?

A. Seattle. [41]

Q. How long have you lived there?

A. Since 1908.

Q. From approximately the first of December, 1927, and up to the latter part of January what employment were you engaged in in the city of Seattle? A. Switching.

Q. For what railroad company?

A. Great Northern and Northern Pacific.

Q. At King's Terminal?

(Testimony of Charles E. Broughton.)

A. Commonly called King Street Terminal.

Q. I will ask you if during the time mentioned—do you know one Thomas Johnson? A. I do not.

Q. Presumably of the city of Portland?

A. I do not.

Q. I will ask you if at any time have you ever conspired or discussed intoxicating liquors with said Thomas Johnson during the time I mentioned, December, 1927, and up to the latter part of January, 1929? A. No, sir.

Q. I will ask you are you acquainted with one Peter Poulas? A. Yes, sir.

Q. You have known him how long?

A. Oh, I don't know; four or five years.

Q. Did you ever conspire with him to violate the National Prohibition Act or the Tariff Act of 1922 in any way whatsoever? A. No, sir.

Q. I will ask you if you are acquainted with one W. C. Miller? A. Yes, sir.

Q. How long have you known him?

A. Six years.

Q. Do you know where he works?

A. He is a switchman in King Street.

Q. Do you know whether you ever conspired with Miller at any time from the period of December 1st, 1927, up to and including the latter part of January, 1929, to violate the National Prohibition Act or the Tariff Act of 1922? A. No, sir. [42]

Q. Did you ever assist him in transporting intoxicating liquor of any kind? A. No.

(Testimony of Charles E. Broughton.)

Q. Did you ever discuss with him at any time the name of one Thomas Johnson? A. No, sir.

Q. Do you know a party by the name of Clifford Perry? A. Yes, sir.

Q. And George H. Finnell?

A. I don't know Finnell personally. He is a policeman in the station there. He has a station inside the station. I never saw him—I see him once in a while.

Q. You have no speaking acquaintance?

A. I never talked to the man.

Q. Did you ever conspire with him to violate the National Prohibition Act in any way?

A. No, sir.

Q. You came to Portland at my request in this matter? A. I did; yes, sir.

Q. The overt act alleged in this indictment against you, Mr. Broughton, is as follows: Said Charles E. *Broughton*, or about the 7th day of January, in the year of our Lord, 1929, within the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there spot and place one Great Northern coach No. 911 on Track No. 4 at the south end of the King Street Terminal coach yard of the Great Northern Railway in Seattle, Washington. If there was anything in this car did you have any knowledge of its contents? A. No, sir.

Q. What are your duties in connection with this Railway Company? What are your specific duties?

(Testimony of Charles E. Broughton.)

A. I get what is commonly known as a switch list. This switch list is made up by the yardmaster and the work is wrote down just the same as your law is. I have got to do that work; if that work is not done I am fired. If they tell me to put a car so and so that car has got to be there.

Q. If as a fact you did on the 7th day of January spot a car No. 911 was it [43] because of written orders that you received?

A. And the superintendent being on the car at that time.

Q. The superintendent. Under his instructions?

A. Under his instructions.

Q. Did you have any knowledge as to why that car was spotted in any particular place?

A. No, sir, I have not.

Q. It is alleged in Overt Act 6 that you on or about the 8th day of January, in the year of our Lord 1929, within the Northern Division of the Western District of Washington and within the jurisdiction of this court, then and there being, did then and there assist one Peter Poulas, *alias* Peter Blaxas, in unloading whiskey from the vestibule of coach No. 911 at the south end of the King Street Terminal coach yards of the Great Northern Railway in the city of Seattle. Did you do such an act?

A. No, sir, I didn't.

Q. Did you ever see Peter Poulas unload any whiskey from any car of any kind? A. No, sir.

Q. Particularly on that particular day?

A. And on no other day; no, sir.

(Testimony of Charles E. Broughton.)

Q. Did you assist anybody on that particular day in unloading any whiskey? A. No, sir.

Q. From any car? A. No, sir.

Mr. McKINNEY.—You may cross-examine.

Mr. LITTLEFIELD.—No cross-examination.

(Witness excused).

TESTIMONY OF WILBUR CHARLES MILLER, FOR DEFENDANT.

WILBUR CHARLES MILLER was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY.

Q. Mr. Miller, where do you reside?

A. Seattle.

Q. How long have you resided there?

A. Nine years.

Q. During that time what occupation have you been engaged in? [44] A. Switchman.

Q. For what railroad or railroads?

A. King Street Terminal.

Q. Worked for them all during that period of time?

A. No, not all that time, but pretty near all; about seven years.

Q. How old are you, Mr. Miller?

A. Thirty-six.

Q. I will ask you if you are acquainted with a party by the name of J. Arthur Boyd?

A. No, sir.

(Testimony of Wilbur Charles Miller.)

Q. Are you acquainted with a man by the name of Thomas Johnson? A. No, sir.

Q. I will ask you if it is a fact did you ever conspire with J. Arthur Boyd, Charles E. Broughton, or Peter Poulas, or W. C. Miller, or Clifford Perry or George H. Finnell, or Thomas Johnson to violate the National Prohibition Act and Tariff Act of 1922? A. I didn't.

Q. In any way whatsoever? A. No, sir.

Q. Now did you ever see Thomas Johnson in the State of Washington in your life?

A. I don't know the man at all.

Q. Never had any dealings of any kind with him?

A. No, sir.

Q. It is alleged in this indictment that one W. C. Miller from the first day of June in the year of our Lord 1928 and up to the first day of October, 1928, within the Northern Division of the Western District of Washington, did then and there work with one Charles E. Broughton at the Great Northern Terminal yards in the city of Seattle. Is that a fact?

A. No, it is not a fact. I worked about four months,—I guess about three months there days on the six-thirty shift during that period.

Q. Of course, you know Broughton worked with the railroad company there during that time?

A. Oh, yes, I have worked with Broughton for about five years. I know that he worked there. I worked with him off and on for five years. I may

(Testimony of Wilbur Charles Miller.)

have [45] worked some with him in that period of time. I could check up.

Q. But they allege that you worked regularly during that period from 10:45 o'clock at night until 6:30 o'clock in the morning.

A. No, I didn't work regularly; no, sir, that is not true.

Q. That the said W. C. Miller, during the months of June, July, August and September, 1928, in the jurisdiction of the court in the Western District of Washington, did then and there receive from one J. Arthur Boyd whiskey and money for spotting and placing cars in the King Street Terminal yards. Did you do such a thing? A. I certainly did not.

Q. Did you know Arthur Boyd during that period of time? A. I did not.

Q. Or before or since? A. No, sir.

Q. Did you have a job of spotting cars during that period of time with the Railroad Company?

A. Why, yes, switching; it is not really spotting; it is just putting them on the train and putting them on the sloughing tracks.

Q. Did you do that under orders or do it on your own volition?

A. Do it under orders; wherever they tell you to put them you put them.

Q. Those specific orders for those trains are records kept by the Railway Company?

A. Yes, sir. That is, they are kept on file for about a year, I believe, and then I don't know what

(Testimony of Wilbur Charles Miller.)

are done with them. They are kept on file for a year anyway; that is, for the current year.

Q. In your work down there in the yard if you spotted any cars you spotted them under orders?

A. Yes, sir; you must do what you are told under orders, that is a cinch.

Q. During that time did you have any knowledge that there was any whiskey being brought into those yards by any of the people named in this indictment or otherwise? A. No, sir.

Q. Did you ever assist anybody in bringing in any or unloading or have any knowledge about it?

A. I did not. [46]

Q. Did you ever see Tom Johnson in the State of Washington? A. I wouldn't know him if I did.

Q. So far as your knowledge is concerned you never saw him? A. No, sir.

Q. Never conspired with him in any way?

A. No, sir.

Q. Have you entered into a conspiracy with any of the other men mentioned? A. I did not.

Mr. McKINNEY.—That is all.

Cross-examination by Mr. LITTLEFIELD.

Q. Just which of these defendants did you say you knew? A. Why, eliminate J. Arthur Boyd.

Q. You don't know Boyd? A. No, sir.

Q. You know all the rest?

A. All but Thomas Johnson. The rest of them all works down—that Finnell, I know him just in a general way. He is a yard policeman there at the

(Testimony of Wilbur Charles Miller.)

depot, the policeman there, and I see him every night when I am going to work. I know him in a general way. I wouldn't say I knew him, and I wouldn't say I didn't know him. I know who he is; I have seen him there every night for the last four or five years; I know I worked with the rest of the boys.

Q. You work with the rest of the boys?

A. Yes, I do.

Mr. LITTLEFIELD.—That is all.

(Witness excused.)

TESTIMONY OF PETER POULAS, FOR DEFENDANT.

PETER POULAS was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY.

Q. Mr. Poulas, you are one of the defendants charged in this indictment with J. Arthur Boyd and others? A. I am.

Q. You are one of the defendants charged in this indictment? A. Yes.

Q. Poulas, during the period of time from December 1st, 1927, up to and [47] including the latter part of January, 1929, did you ever at any time conspire with anyone to violate the National Prohibition Act or the Tariff Act of 1922 in any particular? A. No.

Q. Did you ever at any time aid or assist one

(Testimony of Peter Poulas.)

Charles E. Broughton on or about the 8th day of January to move some whiskey from car No. 911 in the King Street Terminal? A. No.

Q. Are you acquainted with a man living in the city of Portland by the name of Thomas Johnson? A. No, sir.

Q. Did you ever conspire with him to violate the National Prohibition Act or know anything about him? A. No, I did not.

Q. Did you ever see him in your life?

A. No, I never seen him.

Q. How long have you lived in the city of Seattle?

A. Sixteen years.

Q. Where have you been employed during that period?

A. Oh, I was mostly King Street station.

Q. What work were you doing, Poulas?

A. Washing cars, cleaning cars and fixing lamps.

Q. General work. And that work you did under orders? A. Yes, sir.

Q. That is, you had no discretion as to your work? Your work was assigned to you, was it not?

A. Yes.

Q. And anything that you ever did in that yard down there was under orders. Was it or was it not?

A. Yes, it was under orders. I never did anything without orders.

Mr. McKINNEY.—You may cross-examine.

Cross-examination by Mr. LITTLEFIELD.

Q. Which ones of these defendants do you know? Do you know Mr. Boyd?

(Testimony of Peter Poulas.)

A. No, I don't know him.

Q. Do you know Mr. Broughton?

A. I know him.

Q. And Mr. Miller? [48] A. Yes.

Q. And Mr. Perry? A. Yes, sir.

Q. And Mr. Finnell?

A. Just—I know him just passing him.

Q. Did you ever see this man before, Tom Johnson, this man that sits back there, the colored man?

A. No, sir.

Q. You don't know him? A. No.

Mr. LITTLEFIELD.—That is all.

(Witness excused.)

Mr. McKINNEY.—If your Honor please, I now renew my motion to discharge this defendant.

The COMMISSIONER.—This is all your testimony?

Mr. McKINNEY.—No, I have other witnesses here that are out of the city that I want to call for the purpose of showing this man's reputation in this community for being a law-abiding citizen, his reputation for truthfulness and honesty. Some of them could not come this morning.

(Further discussion.)

The COMMISSIONER.—All right, it is ordered continued until 10:00 o'clock on the 16th.

(Thereupon an adjournment was taken until Saturday, February 16, 1929, 10:00 o'clock A. M.)

Portland, Oregon, February 16, 1929, 10:00 o'clock
A. M.

The COMMISSIONER.—The hearing may be re-

(Testimony of B. F. Hargrove.)

sumed. I don't know where we were. Had you rested, Mr. McKinney? You were going to bring some more witnesses?

Mr. McKINNEY.—Mr. Littlefield was going to have some more testimony. I would like to go forward with his part before I go forward with mine.

TESTIMONY OF B. F. HARGROVE, FOR THE GOVERNMENT.

B. F. HARGROVE was thereupon produced as a witness in behalf of the Government, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. LITTLEFIELD.

Q. What is your occupation, Mr. Hargrove?
[49]

A. Special agent, Treasury Department, Bureau of Prohibition.

Q. How long have you held that position?

A. November 16th, 1927.

Q. Do you know Thomas Johnson, the defendant in this case that sits over there? A. Yes.

Q. Are you one of the agents who investigated the case against Tom Johnson and the others named in this indictment? A. I did.

Q. Did you testify before the grand jury in this case? A. I did.

Q. Is this man here the same Tom Johnson that is named in the indictment? A. He is the man.

Q. Mr. Hargrove, do you know J. Arthur Boyd, codefendant in the case? A. Yes, sir.

Q. I will ask you whether or not you had a con-

(Testimony of B. F. Hargrove.)

versation, or rather, overheard a conversation between Mr. Boyd and the superintendent up at Seattle? A. I did.

Q. On what date was that?

A. December 28th, 1928.

Q. What was the name of the superintendent?

A. Frank Bisbee.

Q. Frank Bisbee? A. Yes.

Q. Superintendent of what, Mr. Hargrove?

A. Terminals; Great Northern and Northern Pacific Terminal.

Q. At Seattle? A. At Seattle.

Q. Now, you say you overheard a conversation between Mr. Boyd and Mr. Bisbee? A. Yes, sir.

Q. Will you state, please, what that conversation was?

Mr. McKINNEY.—If you can state that conversation from memory I would prefer it, if your Honor please, unless he can testify that he has no independent recollection of it. I would rather he would not read his notes on it if he can testify.

Q. (By Mr. LITTLEFIELD.) Do you remember the conversation? [50]

A. Yes, Bisbee asked Boyd,—or rather, Boyd asked Bisbee—he didn't ask; he said, "I am sorry you didn't meet Johnson—"

Mr. McKINNEY.—Just a moment. Was Mr. Johnson present at this conversation?

A. No, he wasn't.

Mr. McKINNEY.—I object to any conversation he had unless it was in his presence.

(Testimony of B. F. Hargrove.)

Mr. LITTLEFIELD.—If the Court please, any statements made by one conspirator during the time of the conspiracy is binding on all.

Mr. McKINNEY.—No, that is not the law at all.
(Further discussion.)

The COMMISSIONER.—Oh, I will hear it.

Mr. LITTLEFIELD.—Go ahead, Mr. Hargrove.

A. Bisbee asked him, asked Boyd, if the colored fellow from Portland had arrived the other night. Boyd said, “Yes, I am sorry you didn’t get to meet him. He handles our Portland end of the business and has been very successful.” And he says, “He should have been a white man, although he is colored; he is a whole lot whiter than a whole lot of white men.” Bisbee said he was sorry he didn’t get to meet him that night, but had had a previous engagement. That is about the gist of that conversation.

Q. Was anything said at that time by either of the two men with reference to liquor smuggling?

A. With reference to what?

Q. Liquor smuggling.

Mr. McKINNEY.—Just a moment. I move to strike that, if your Honor please. Bisbee is not a party to this action at all, is not named in here.

The COMMISSIONER.—What is it?

Mr. McKINNEY.—I say, Bisbee is not a party to this action. He is not a defendant in any sense of the word. Some conversation had with what apparently is a Government agent about this is not

(Testimony of B. F. Hargrove.)

competent, especially in this man's absence. Bisbee was not a co-conspirator.

Mr. LITTLEFIELD.—Boyd is.

The COMMISSIONER.—Well, I think we will hear what the rest of this is. Was there anything said?

A. I would have to refresh my memory from my notes on that.

Mr. LITTLEFIELD.—You may do so. [51]

A. This is a case covering a year or more—

Mr. LITTLEFIELD.—You may refer to your notes.

Mr. McKINNEY.—You said this conversation took place in December of 1928; that is only just a month ago.

A. Mr. McKinney, I have worked on a lot of stuff since then.

Mr. McKINNEY.—You have no independent recollection now as to what conversation took place between Bisbee and Boyd? Just a moment, Mr. Hargrove. You have no independent recollection now of that conversation?

A. Yes, what I have told there.

Mr. McKINNEY.—I mean of anything further.

A. I mean to give it all in there, just the way it happened, I would have to refresh my memory. There was a conversation—

Mr. McKINNEY.—What you have testified to is not the way it actually happened?

A. Yes, that is virtually the wording there.

Mr. McKINNEY.—That is all.

(Testimony of B. F. Hargrove.)

Mr. LITTLEFIELD.—I think he is entitled to refresh his memory from his notes so he gets this thing straight.

A. Well, I don't have to. He asked—Bisbee asked Boyd if they were still handling liquor to Portland in baggage cars. Boyd said no, they weren't, that they had cut that out; that they were transporting it down there in automobiles. That is about all the conversation that had any relation to Johnson.

Q. Now, prior to that time, Mr. Hargrove, and on or about the 15th of March of 1928, did you see the defendant Tom Johnson? A. I did.

Q. Where? A. In the S. P. & S. coach yards.

Q. Where? A. Portland.

Q. And will you relate the circumstances under which you saw him at that time?

A. Well, we had a colored man named Gordon Chapman under surveillance.

Mr. McKINNEY.—I object to anything about Gordon Chapman. We are talking about Tom Johnson now. He is the defendant in this indictment.

Mr. LITTLEFIELD.—Well, there isn't a rule that prevents the mentioning of any names.

The COMMISSIONER.—That is immaterial, that name; just go on. [52]

A. Well, I saw Tom Johnson that night leave a certain house on Fargo Street here accompanied by another automobile. We lost him and then picked him up in the S. P. & S. coach yards; one car was

(Testimony of B. F. Hargrove.)

backed up against a coach; Johnson's car was standing over near the switch end. He was driving the car prior to the time it got there.

Q. At that time were you accompanied by anyone else, Mr. Hargrove? A. Ralph E. Elder.

Q. Did you go right up to where the car was?

A. We did. We flushed them, run into them. We didn't know just where they were and we run into them and they scattered and kept on going.

Q. What time of the day or night was this?

A. It was about midnight.

Q. Where were these men when you saw them; you say you flushed them.

A. They were standing right alongside of this combination baggage and mail car.

A. One of the automobiles, you say, was parked right by it?

A. Was backed up against it, between two shanties that had been set on the ground.

Mr. LITTLEFIELD.—You may cross-examine.

Cross-examination by Mr. McKINNEY.

Q. Hargrove, when do you say you went to work for the Government? A. November, '27.

Q. November, 1927? A. Yes, sir.

Q. What has been your occupation previous to going to work for the Government?

A. I investigated violation of the National Bankruptcy Act for eight years prior to that.

Q. For whom?

A. The National Association of Credit Men.

Q. National Association of Credit Men?

(Testimony of B. F. Hargrove.)

A. Turned all my cases over to the Government.

Q. What were you doing in December of 1927?

A. December of '27?

Q. Yes.

A. I was here part of the time and Seattle part of the time.

Q. You say you didn't go to work for the Government until November? A. The 16th. [53]

Q. The 16th? A. '27.

Q. And what were you doing in Portland from November up until December?

A. Well, I didn't arrive on the coast here until December the 9th.

Q. That is right, you weren't here; you were in New York City, weren't you? Where were you stationed? A. St. Louis—Chicago.

Q. Chicago. Working with the Federal Prohibition Department there, were you?

A. I was temporarily assigned to the Chicago office until I was transferred to the coast.

Q. You had been in service in the east, hadn't you? A. Yes—prior to that?

Q. Prior to that. A. No.

Q. You went to work in Chicago? A. Yes, sir.

Q. In November? A. Yes, sir.

Q. You came to the coast on December 9th?

A. I arrived in Frisco on the 6th and here on the 9th.

Q. When was the first time you ever saw Tom Johnson after your arrival?

A. Sometime in February of '28.

(Testimony of B. F. Hargrove.)

Q. And you say it was in March, '28, that you saw him in the S. P. & S. yards? A. Yes, sir.

Q. Who was the fellow he was with?

A. Gordon Chapman.

Q. Was he indicted in this case? A. No.

Q. You have seen him lots of times, haven't you?

A. Yes.

Q. Why didn't you indict him?

Mr. LITTLEFIELD.—This witness is not a grand jury.

Mr. McKINNEY.—I know that. Did you make an attempt to indict him in Seattle?

Mr. LITTLEFIELD.—I don't think that is competent.

Mr. McKINNEY.—Why, he sees a man with him and I know that he knows where [54] Chappie has been all the time.

Mr. LITTLEFIELD.—You can't draw an inference from the fact that the grand jury doesn't return an indictment against a man.

The WITNESS.—No, you are wrong. My information was—

Q. (By Mr. McKINNEY.) It was in March, 1928, I believe you said you saw him down there; is that right? A. March 15th.

Q. March 15th. When is the next time you saw him? A. You want the next time I saw him?

Q. Yes. That is the last time?

A. That is the last time I ever saw him.

Q. That is the last time you ever saw Tom Johnson until to-day, isn't it? A. That is the last time.

(Testimony of B. F. Hargrove.)

Q. Tom Johnson wasn't present at the conversation you had in Seattle at all, was he?

A. I did not,—

Q. You can answer that. He wasn't present, was he? A. No.

Q. No. All right, just answer the question. You have never seen him in the State of Washington? A. Not to my knowledge.

Q. You have never seen him talking to Art Boyd, have you? A. No, sir.

Q. You have never seen him talking to Charles E. Broughton? A. No.

Q. Never seen him talking to Peter Poulas?

A. No.

Q. Never seen him talking to W. C. Miller?

A. No.

Q. Never seen him talking to George N. Finnell?

A. No.

Q. Never saw him talking to Thomas Johnson—pardon me. Never saw him in conversation with any of these people that you allege in here as unknown conspirators, have you? A. No.

Q. Have you become acquainted with any of those people that you allege in the indictment as unknown conspirators since this indictment?

A. You mean— [55]

Q. You allege that these people conspired here. I assume this case was made principally on your testimony before the grand jury, wasn't it?

A. Which defendants do you have reference to, Mr. McKinney?

(Testimony of B. F. Hargrove.)

Q. All of those—

A. Other persons to the Grand Jurors unknown.

Q. It says “together with sundry and divers other persons to the Grand Jurors unknown.”

A. Well, the investigation is still under way.

Q. This conspiracy is terminated, isn't it, this alleged conspiracy? A. Yes.

Q. In that conversation at Seattle Boyd never used the name of Tom Johnson at any time, did he?

A. No.

Q. That is all the evidence you had about this man presented to the Grand Jury?

A. Oh, no, I have other evidence.

Q. Of Tom Johnson? A. Yes.

Q. Where are those witnesses now?

A. Where are those witnesses?

Q. Yes.

A. Well, they are some here and some in Seattle.

Q. You have never had any before the Grand Jury from here, did you? A. Yes.

Q. Whom did you have before the Grand Jury from here?

A. The manager of the telephone company.

Q. All right. Now, did you have Brisbee before the Grand Jury? A. I didn't.

Q. Was he before the Grand Jury?

A. I don't think so.

Q. You don't know. You were there all the time, weren't you? A. He wasn't before it.

Q. You say he wasn't before the Grand Jury?

A. He was not.

(Testimony of B. F. Hargrove.)

Q. He wasn't? A. He wasn't.

Q. This man Bisbee wasn't indicted? [56]

A. No.

Q. You never saw Tom Johnson—let's see, the 7th day of January—did you have occasion to see Tom Johnson in 1929? A. No.

Q. Did you ever see Tom Johnson smuggle any whiskey from British Columbia into the State of Washington? A. I didn't see him, no.

Q. Just answer the question; you didn't see him. So far as you are concerned, your personal knowledge about the matter, Tom Johnson has never been in the State of Washington, has he; of your own personal knowledge now?

A. Oh, of my own knowledge, no.

Q. And the reason that you happened to see Tom Johnson on one occasion was because you were investigating a man named Chappie; is that it?

A. No, I was investigating Tom Johnson.

Q. You testified a moment ago that you were investigating a man named Chappie, and the man by the name of Johnson, didn't you testify—

A. Our information was—

Q. I am not talking about what your information was. I am asking you a question now. Didn't you so testify a moment ago, that you were investigating a man named Chappie?

A. I simply had him under surveillance.

Q. Yes, that is right. You never saw Tom Johnson with any whiskey? A. No.

(Testimony of B. F. Hargrove.)

Q. Never did. You never saw him run any whiskey from Seattle? A. No, I didn't see him.

Q. You testified before the Grand Jury there that he conspired in the State of Washington, didn't you?

A. Yes.

Q. You didn't know, did you? Of your own knowledge now you didn't know it, did you? You can answer that question "yes" or "no." You don't know it, do you?

A. Well, I had evidence of it.

Q. No, I am not asking you that, I say you don't know that, do you? A. Not of my own knowledge.

Q. That is right. As a matter of fact—withdraw that.

Mr. McKINNEY.—I think that is all.

Redirect Examination by Mr. LITTLEFIELD.

[57]

Q. Another matter I want to ask Mr. Hargrove about. Mr. Hargrove, were there some arrests in this case made on January 8th?

A. Yes, sir.

Q. 1929? A. Yes, sir.

Q. Who was arrested at that time?

Mr. McKINNEY.—I don't see the materiality or the competency of who was arrested.

The COMMISSIONER.—I don't either, to be frank. What is the purpose of this?

Mr. McKINNEY.—Unless it has some bearing on Tom Johnson.

Mr. LITTLEFIELD.—It certainly has plenty of bearing, when they bring all the co-defendants down

(Testimony of B. F. Hargrove.)

here to testify they are innocent and so on in behalf of this man.

Mr. McKINNEY.—I brought every one of them, all of them I could get.

The COMMISSIONER.—We will hear this, if you are claiming it has some bearing on this.

Q. (By Mr. LITTLEFIELD.) Who was arrested at that time?

A. W. C. Miller, Charles Broughton, Peter Poulas, and that is all we arrested on that day.

Q. Did you make some seizures of liquor on that day? A. Yes, sir.

Q. What were the circumstances; tell us what happened?

Mr. McKINNEY.—I can't see the materiality of that in this matter, what happened up there, unless Tom Johnson was present. There is no showing that he was ever in the State of Washington.

Mr. LITTLEFIELD.—Here is one of your overt acts right here.

Mr. McKINNEY.—There is no overt act in this indictment against Tom Johnson; not a single overt act.

Mr. LITTLEFIELD.—We don't have to prove an overt act against Tom Johnson.

The COMMISSIONER.—Well, the objection will be overruled. You can show what that is.

A. You want to know all the circumstances of that seizure?

The COMMISSIONER.—No, just in short what this was about?

(Testimony of B. F. Hargrove.)

A. Well, that night I saw Broughton and Poulas unloading liquor from Great [58] Northern coach 911 and packing it off into the weeds. We arrested them right then and seized 20 cases and four bottles. Broughton and Poulas were taken to the office, and Broughton was questioned some at that time—

Mr. McKINNEY.—Oh, I object to what he said after his arrest.

Mr. LITTLEFIELD.—We don't care about that.

The COMMISSIONER.—I would like to know where this was, Mr. Hargrove.

A. Seattle.

The COMMISSIONER.—This is Seattle.

Q. (By Mr. LITTLEFIELD.) Is that all the facts in connection with the seizure?

A. That is all.

Q. That is what happened right there?

A. That is what happened right there.

Mr. LITTLEFIELD.—That is all.

Recross-examination by Mr. McKINNEY.

Q. The first indication that you had of any whiskey coming into that yard during the year of 1928 was in the early part of December, wasn't it?

A. That is December 1st I started bearing down on this case.

Q. December, 1928, wasn't it? A. Yes.

Q. Just a little over a month before you made an arrest, wasn't it? A. Yes, sir.

Q. You have alleged here that these boys com-

(Testimony of B. F. Hargrove.)

bined and conspired over a period of a year and two months. You know that is not true, don't you?

A. I didn't write that indictment.

Q. I know, but it is in here as evidence. You are one of the investigators in this case, and said you had been working on it a year. You know that is not a fact, don't you?

A. It has been going on for four years.

Q. I didn't ask you that. I am asking you about these particular men. You know that there are other people in the yard there that run a lot of whiskey besides these people that you allege in here ran it. Now, you know that these men haven't been in conspiracy over that period of time, don't you? A. About four years.

Q. Any conspiracy that would have taken place between any of these people here [59] began in December, 1928, didn't it?

A. No, it began four years ago.

Q. You say you have only been in the work since 1927. What do you know about four years ago of your own knowledge?

A. Why, the defendants' own admissions to me.

Q. Just a moment. That is, as far as Tom Johnson is concerned here now. Any admission made to you was made after an arrest, wasn't it?

A. No, we got some before.

Q. Not in reference to Tom Johnson; not with reference to Tom Johnson.

A. There were admissions made before arrests regarding Tom Johnson.

(Testimony of B. F. Hargrove.)

Q. That is just what you testified to here previously; just what you have testified to here?

A. Yes.

Q. Well, that is right. Aside from that there haven't been any? A. What, conversations?

Q. Yes. A. No.

Q. All right. And everything that you know about Tom Johnson, so far as you are concerned, is the fact—where was this conversation that you heard about this man in Seattle. Where were you?

A. I was hidden in the next room.

Q. Yes. What room were you in? Where were you?

A. Oh, a room adjoining that of Superintendent Bisbee.

Q. Nobody knew you were present except Bisbee?

A. There was three of us in the other room.

Q. That is all right. You and Groff and who else? A. Murray.

Q. You had an understanding with Bisbee before you came down there this was to take place?

A. We knew it was going to take place.

Q. I didn't ask you that. I asked you if you had had an understanding with Bisbee that this was to take place down there?

A. He told us it was going to take place.

Q. When did you first get any information from Bisbee about this matter?

A. About—now which particular matter?

Q. This particular matter of that whiskey coming there. You knew no whiskey [60] came there

(Testimony of B. F. Hargrove.)

on or before the 10th day of December, 1928, didn't you?

A. Oh, there is whiskey came in before that.

Q. Did you ever see any? A. I never saw it.

Q. That is right. You don't know anything about it then, do you?

A. No, only what our investigation shows.

Q. That is just exactly right. All you know about it is what you saw there after the 10th of December; isn't that right?

A. Yes, sir.

Q. That is right. Why didn't you say that? Now, then, you never had any information from Bisbee about this at all until after the 10th of December, did you? A. The 12th, I believe.

Q. About the 12th of December. And Bisbee came to you and told you about it?

A. No, he sent for me.

Q. Who did he send? A. Who did he send?

Q. Yes, who did he send to get you?

A. I believe he told somebody that he wanted to see us—

Q. I see. A. After we had talked with—

Q. Just a moment. I don't want you volunteering any information here.

Mr. LITTLEFIELD.—Let him answer the question.

Mr. McKINNEY.—He answered the question. He sent for him. I think that is all.

Q. (By Mr. LITTLEFIELD.) Did you have

(Testimony of B. F. Hargrove.)

some further explanation to make about that question he asked you, Mr. Hargrove?

A. Oh, we had talked to special agents of the railroad prior to December 1st.

Q. (By Mr. McKINNEY.) Yes, but you didn't talk to Bisbee? Bisbee wasn't a special agent, was he? You just said he was superintendent of the yard there, didn't you?

A. I said we had talked to special agents of the railroad prior to December 1st.

Q. I asked you about your conversation with Bisbee, didn't I? I wasn't talking about any other special agent.

A. A lot of conversation with Bisbee— [61]

Q. I guess you had some with Robinson, didn't you? Did you have any with Robinson, the special agent? A. Not until after the knock over.

Q. Yes, that is right. You didn't indict Robinson? A. I had nothing to indict him on.

Q. You didn't have anything to indict Johnson on, either, did you? You indicted him.

Mr. LITTLEFIELD.—Oh, I object to that.

Mr. McKINNEY.—It is quite evident.

Mr. LITTLEFIELD.—All right; let him answer the question.

Mr. McKINNEY.—That is all.

Mr. LITTLEFIELD.—Go ahead and answer the question. Tell him what you had to indict this man on. Start in at the beginning and tell every bit of information you had that went before the Grand Jury.

(Testimony of B. F. Hargrove.)

A. All right. We have had long distance calls from Broughton to Johnson on January—

Mr. McKINNEY.—Wait a minute.

Mr. LITTLEFIELD.—You asked him that question. You opened that up.

Mr. McKINNEY.—Will you just pardon me until I make an objection here? I object to this man testifying to anything he doesn't know anything about personally. He asked him everything that was said before the Grand Jury. It is preposterous.

Mr. LITTLEFIELD.—You opened it up yourself.

Mr. McKINNEY.—I didn't open it up.

The COMMISSIONER.—I think this witness was all through with everything he personally knew.

Mr. LITTLEFIELD.—That is all.

(Witness excused.)

Mr. McKINNEY.—Now, at this time I renew my motion for discharge of this defendant, Tom Johnson.

The COMMISSIONER.—The motion will be overruled.

TESTIMONY OF ARCHIE F. LEONARD, FOR DEFENDANT.

ARCHIE F. LEONARD was thereupon produced as a witness in behalf of the defendant, and, having been first duly sworn, testified as follows:

(Testimony of Archie F. Leonard.)

Direct Examination by Mr. McKINNEY. [62]

Q. Mr. Leonard, what is your occupation?

A. Police inspector in this city.

Q. How long have you been on the police force?

A. I first went in going on 29 years ago.

Q. Are you acquainted with the defendant named here, Thomas Johnson? A. I am.

Q. How long have you known him, Inspector?

A. I have known him by sight for a few years back, but personally since about the middle of August of last year.

Q. In what connection did you have occasion to meet him and know him?

A. On the occasion of the case on his ranch near St. Helens of the murder of his foreman.

Q. That was in what month?

A. The murder occurred on the 4th of July last, and I met him about the middle of August.

Q. From that period, the middle of August, of 1928, up to and including what months did you have occasion to be in pretty close contact with Tom Johnson all the time?

A. Well, from about the middle of August until about the middle of October, and particularly the first half of that we were in pretty close communication. The arrest of one of the murderers at Pocatello was on the 27th of August, and we went up there together, and of course just before that date and after that date for a time we were very busy on account of the inquest, preliminary hearing, and so forth.

(Testimony of Archie F. Leonard.)

Q. That is, then, following that in December of '28 the defendant was tried, was he not?

A. Tried the 10th of December.

Q. Now, from the period from the month of August up to December Mr. Johnson was very busily engaged in the apprehension of these people in connection with yourself, wasn't he, at all times?

A. Yes, a lot of times.

Q. A lot of time he was sent out of town?

Mr. LITTLEFIELD.—I object to counsel leading the witness.

Mr. McKINNEY.—I withdraw that.

Q. During that period of time, Inspector, what would you say as to Mr. Johnson's [63] opportunity for smuggling intoxicating liquors?

Mr. LITTLEFIELD.—Objected to as being absolutely incompetent.

Mr. McKINNEY.—Why, it is perfectly—

The COMMISSIONER.—Well, if he can say, if he knows what the defendant was busy at.

Mr. McKINNEY.—That is what I am trying to prove, for he knows pretty well how busy he was and what he was doing.

The COMMISSIONER.—What is this period of time?

Mr. McKINNEY.—From July and August, 1928, up to and including December of that year.

The COMMISSIONER.—This is an opinion you are asking for, his idea?

Mr. LITTLEFIELD.—Sure, it is his conclusion; it is not a state of facts, when he saw him even, and so on.

(Testimony of Archie F. Leonard.)

Mr. McKINNEY.—Just relate to the Commissioner, then how close your contact with him was over that period and what Tom Johnson was doing, in order to give him some idea as to how occupied he was during that period of time.

A. I was in pretty constant communication with him, not only on account of the news of the one defendant arrested, but in regard to the other one who is still at large, and I knew a great deal of his movements; that is to say, in this way, that if I didn't see him personally, why, I was in communication with him on the phone.

Q. That is, you knew where you could get him at all times that you wanted to get him; is that right?

A. Yes, I did get him.

Q. You had occasion to visit his ranch?

A. Many times.

Q. Give the Commissioner some idea what kind of a ranch he has out there?

A. Well, it is on the Veronia Road out of St. Helens about four and a half miles. It lies to the left in the canyon, and it is a hog ranch and fruit-trees, cultivated, clean, and then he has hogs there and pigeons.

Q. How many pigeons would you say? Give the Court some idea as to what size business he has so far as this ranch is concerned?

A. Well, I don't know the number of pigeons. I know it is a large pigeon house on the one side of his dwelling, and on the other side he had—the murder took place in the large hog-pen, and the

(Testimony of Archie F. Leonard.)

work they were all doing there at the time of the murder was building another pigeon house. [64]

Q. How many hogs would you say he had on the ranch during the time that you first went out there in August? Give us an approximate idea. Show what kind of a going business he had there, Inspector.

A. Well, in regard to that, I saw a lot of hogs around there, different sizes, young ones and old ones, brood sows, and one thing and another, but I don't know the number he had. I think I asked him at one time, but I don't remember. I couldn't say how many he had at that time, but he had had a great deal more than that; he had had a great many more than that, which indications to me showed, because he was hauling swill from the city here on contract, as I understood it, from some of the larger hotels.

Q. Inspector, I will ask you if you know what the reputation of Tom Johnson is in the community in which he resides for truth and veracity?

A. I would say it was very good.

Q. You know that to be very good?

A. Yes, sir.

Mr. McKINNEY.—You may examine.

Cross-examination by Mr. LITTLEFIELD.

Q. How long have you known Tom Johnson?

A. Known him personally since about the middle of August last year.

Q. You didn't know him before that time?

(Testimony of Archie F. Leonard.)

A. I knew him by sight.

Q. You knew him by sight? A. Yes.

Q. Have you also maintained a residence here in Portland during the time you have known him?

A. Yes, at 1062 East 28th north, near Alberta.

Q. Now, would you see Johnson every day during that period that you mentioned until December 10th, I think you said it was? Did you see him every day?

A. No, it would not—constant communication, I suppose would not run up as high as December 10th. That is the day of the trial.

Q. It would not run up—

A. No, I put it up until along the time of the meeting before the Grand Jury down there, which was on the 9th or 10th of October.

Q. Well, would you see him every day during that time?

A. No, I wouldn't during that whole period, I wouldn't see him every day, no. [65]

Q. Did you talk to him on the phone at least once a day during that time?

A. Well, now, we are speaking of the time between the middle of August and about the middle of October?

Q. Yes.

A. No, I couldn't say that I seen him or talked to him on the phone every day since that time.

Q. And of course you don't pretend to know of your own knowledge all of his activities, just what he was doing, during that time, do you, Inspector?

(Testimony of Archie F. Leonard.)

A. No, I couldn't say just what he was doing, but the idea that I meant to convey was that if I wanted to reach him on the phone I didn't have any difficulty, or if I wanted to see him.

Q. Where would you call him on the phone? Here in Portland or out to the ranch?

A. I would call him over here.

Q. Over here?

A. At Garfield 6448, over to his residence.

Q. What was that telephone number again?

A. Garfield 6448.

Mr. McKINNEY.—I object to that, if your Honor please.

Q. (By Mr. LITTLEFIELD.) That is the telephone number where you always found him?

A. Yes; at his residence. When I called the house, if I didn't find him there I talked to his wife and made arrangements to meet him or talk to him on the phone, or had him call me.

Q. Well, now—

A. Of course, we put in considerable time together in working on this case; in fact, we made a trip to Pocatello together.

Q. To apprehend one of the murderers?

A. Yes.

Q. Well, now, when you called up on the phone for him that would be during the day that you would do that, Inspector?

A. Day and night both.

Q. Did you ever call him up at this telephone number along about midnight on any of these occasions?

(Testimony of Archie F. Leonard.)

A. I called him pretty late, or else he has called me after I left a call.

Q. I see. On occasions you would leave a call and he would call you back? [66] A. Yes.

Q. I see.

A. Generally about—I would generally get him along about dinner-time.

Q. That is the best time to get him?

A. As I remember it, yes.

Q. Well, you say that his reputation—What did you say about this man's reputation?

A. I think I was asked as to reliability for truth or veracity. In my acquaintance with him I certainly found him reliable and square in his dealings in any business I had with him. I would say that he was reliable. I had no cause to complain with him in any way.

Q. You are basing that on his assistance to you in locating the persons that had committed the murder down there on his ranch?

A. Well, yes, his assistance and his—our figuring together in working on the case throughout. That is the extent of our acquaintance; we had no other mission. And not only that, I might say in connection with that trip to Pocatello that he was about as good a partner as an officer could expect to have under those circumstances.

Q. Did you ever hear anyone discuss his reputation?

A. Yes, I heard him spoken of since I have been—since this arrest was made, which caused quite a little talk, why, I have heard him spoken of.

(Testimony of Archie F. Leonard.)

I don't remember anyone ever speaking of him but favorably with respect to being called a square shooter.

Q. Well, are you confining your testimony to his reputation as to truth and veracity?

Mr. McKINNEY.—Just a moment, if your Honor please. That is not a fair question to ask him. He can cross-examine upon what he testified to. He wants to ask him what his reputation is for something else. That is a different question, Littlefield.

Mr. LITTLEFIELD.—I wish the reporter would turn back then and read the question that you asked with reference to reputation, and I will be sure what you asked him.

Mr. McKINNEY.—I asked him what his reputation was in the community in which he resided for truth and veracity.

The WITNESS.—I might explain, Mr. Littlefield—

Mr. LITTLEFIELD.—Go ahead and explain anything you want to tell us. [67]

A. To bear out my line of what I am trying—the way I am answering, would be the neighbors down there around the place, the way they speak of Tom Johnson.

Q. Oh, down there? A. Yes.

Q. What about people here in Portland?

A. Well, I didn't know of anyone around there where he lived, no occasion to speak to them about it, to anyone. When the case came up and he was

(Testimony of Archie F. Leonard.)

spoken of he was—I certainly never heard anything against him, that is, to his being a man of his word, or whatever you may call it.

Q. Well, now, what is his reputation in the police department?

Mr. McKINNEY.—I object to that, what his reputation is in the police department.

Mr. LITTLEFIELD.—Well, that is all in the community where he lives. I want to know what his reputation is—

Mr. McKINNEY.—I withdraw any objection to it.

The COMMISSIONER.—Very well; go ahead then.

A. Well, there isn't anything that I could say personally. It is what I have heard of down there.

Q. (By Mr. LITTLEFIELD.) That is what reputation is, what people say about you, so go ahead.

Mr. McKINNEY.—Reputation for what particular thing are you talking about?

Mr. LITTLEFIELD.—Well, he has confined his testimony to truth and veracity. That is competent.

Mr. McKINNEY.—Now, what do they think in the police department in that respect, Mr. Leonard. What do the people in the police department say generally about Tom Johnson as to truth and veracity?

A. Why, they speak well of him as to his truth and veracity in any of the cases where he may have been arrested.

Q. Now let's see, will you give me names of the

(Testimony of Archie F. Leonard.)

police officers that you have heard say that, discuss his reputation for truth and veracity?

Mr. McKINNEY.—Oh, I object to that, if your Honor please, as not proper cross-examination.

Mr. LITTLEFIELD.—That is entirely proper.

The COMMISSIONER.—If he remembers some officers he has talked with, [68] I think that is correct.

A. Well, when it comes to that I don't know that I do remember the name of the officer, but I believe it is Sergeant Olsner, sergeant of the vice squad, some one or another had a conversation with him in regard to Johnson and he spoke highly of him, and I believe it was Sergeant Olsner, but I am not sure as to that.

Q. He is the only one?

A. He is the only one I can think of just now. I am not sure, Mr. Littlefield, it is Sergeant Olsner, but I believe it was.

Q. Now, you said they spoke well of him. You mean as to his truth and veracity, I presume.

A. Well, I have—

Mr. McKINNEY.—Just a moment. Don't volunteer any information, Mr. Leonard. That is what he is confined to. You should try to confine your cross-examination to that, Mr. Littlefield. That is all I asked him.

Mr. LITTLEFIELD.—Well, that is what I asked him. He went further there.

Mr. McKINNEY.—He has testified to nothing else.

(Testimony of Archie F. Leonard.)

Mr. LITTLEFIELD.—He went further there and mentioned that somebody told him—

Mr. McKINNEY.—That doesn't make it proper cross-examination, because he volunteered something, for you to go into the details of it.

Mr. LITTLEFIELD.—Well, he volunteered that. I want to find out if he was just confining that to the issue here of truth and veracity. That is what you had reference to, wasn't it, Mr Leonard?

A. Well, what I really had reference to, Mr. Littlefield—

Mr. McKINNEY.—You may answer that "yes" or "no." Did you answer his question "yes" or "no"?

A. Will you state the question again, please?

Q. (By Mr. LITTLEFIELD.) I asked you whether what you said about Sergeant Olsner being the man that had told you that this fellow was a square shooter, and so on,—I don't remember your exact words,—I asked you if you were confining that to the question of his reputation for truth and veracity?

A. Well, I suppose you would call—

Mr. McKINNEY.—Can you answer that "yes" or "no"?

A. Yes, I would say that he meant truth and veracity. [69]

Q. (By Mr. LITTLEFIELD.) I see.

A. That he didn't—

Mr. McKINNEY.—Just a moment.

(Testimony of Archie F. Leonard.)

A. There ought to be an explanation, I think, to my meaning of the matter.

Mr. McKINNEY.—That is all right.

Mr. LITTLEFIELD.—I am willing to have the witness make an explanation.

Mr. McKINNEY.—That is my witness, Mr. Littlefield, if you don't mind.

Mr. LITTLEFIELD.—All right, if you don't want your witness to explain his testimony it is all right with me, I guess.

Mr. McKINNEY.—It is all right. I am satisfied.

Q. (By Mr. LITTLEFIELD.) Now, who else did you ever talk to about this man's reputation for truth and veracity?

A. Do you mean around—

Q. Yes, anywhere?

Mr. McKINNEY.—Anywhere in Portland.

A. Well, I can't say that I recall any names now. I have heard him spoken well of in that respect after this case broke, after we got this one man, and I don't make a note of any names of anyone, but that was my idea that I formed. It is just like it is with Sergeant Olsner. I am not sure he was the man, but it runs in my mind that he was.

Mr. LITTLEFIELD.—That is all.

(Witness excused.)

TESTIMONY OF ARTHUR MOLSWORTH,
FOR DEFENDANT.

ARTHUR MOLSWORTH was thereupon produced as a witness in behalf of the defendant, and, having been first duly sworn, testified as follows:

Direct examination by Mr. McKINNEY.

Q. Mr. Molsworth, you reside in the city of Portland? A. Yes, sir.

Q. How long have you resided here?

A. Well, I was out a short time. I came to Portland 39 years ago.

Q. How long have you known Tom Johnson?

A. About nine years. [70]

Q. You have had business dealings with him?

A. Yes, sir.

Q. Loaned him money? A. Yes, sir.

Q. To what amounts have you loaned him money?

A. All he wanted if I had it. I don't think it ever at any one time went over three thousand dollars.

Q. On these loans did you require any collateral from him? A. Never have.

Q. How many occasions, approximately, would you say that you have loaned him money under those circumstances generally over that period of time; on numerous occasions?

Mr. LITTLEFIELD.—I don't know what that has to do with the case here. I object to it.

Q. (By Mr. McKINNEY.) All right. Do you

(Testimony of Arthur Molsworth.)

know what the reputation of the defendants is in the community in which he resides for truth and veracity, Mr. Molsworth?

A. I do. I know from my own personal experience and business with the man.

Mr. LITTLEFIELD.—I object to that. Reputation is not what his own experience is. It is what people say about him.

Mr. McKINNEY.—Wait until he finishes. You have talked to other people about Tom Johnson, have you?

A. Yes.

Q. All right. From what conversation you have had with other people about Tom Johnson, what would you say as to his reputation for truth and veracity? A. I would say it was good.

Mr. McKINNEY.—You may examine. —one other question, Mr. Littlefield. You of course knew of Mr. Johnson's connection with his ranch out here?

A. I knew that—I say I know; he told me that he had a hog ranch. I have never been on the ranch, but I am on the board of directors of this new Masonic Temple, and he came to me and wanted the garbage. I was chairman of the house committee of that organization and he arranged to get the garbage for his hogs, and I have heard him speak of his hog ranch, and others speak of his hog ranch.

Q. Have you endeavored to get this garbage gratis?

A. Yes, sir, he wanted the garbage for his hogs,

(Testimony of Arthur Molsworth.)

and I arranged to get it [71] for him from the dining-room of the new Temple.

Mr. McKINNEY.—You may examine.

Cross-examination by Mr. LITTLEFIELD:

Q. Who have you heard discuss this man's reputation, Mr. Molsworth?

A. The first time that the matter was brought to my attention, Mr. Littlefield, was—before Mr. Johnson came in to get some money, I have forgotten who the man was, but I believe it was Mr. Wagner called me up and wanted to know if we had any money. I said, "Perhaps there is a little." He said, "There is a man by the name of Tom Johnson wants some money, and he is absolutely square and honest; if you let him have it it will be all right." And I let him have money from that time on.

Q. You refer to Lou Wagner?

A. I refer to Mr. Lou Wagner. He is the man that, if I recall—that is one of the men. I don't know, Mr. Littlefield, there has been a remark here—if a man's reputation is not good it spreads pretty rapidly; we can assume it is good. But Tom Johnson, all the dealings I have had with him, Mr. Littlefield, he has been A-1. If he borrowed a thousand dollars and said he would be in Monday with it he came in.

Q. Yes, that may be true.

A. That is true, Mr. Littlefield.

Q. Are you familiar with his reputation in the

(Testimony of Arthur Molsworth.)

community here as to whether or not he is a law abiding citizen?

Mr. McKINNEY.—Just a moment. I object to that as not proper cross-examination.

The COMMISSIONER.—I assume you make him your own witness for that purpose?

Mr. McKINNEY.—Absolutely.

Mr. LITTLEFIELD.—I will ask you again—

Mr. McKINNEY.—Well, he cannot. It is not competent on any theory.

Mr. LITTLEFIELD.—I can make him my witness. Do you object to my making him my witness?

Mr. McKINNEY.—No, I don't object to your making him your witness.

The COMMISSIONER.—Do you want to ask him that question?

Q. (By Mr. LITTLEFIELD.) What is his reputation here as to being a law abiding [72] citizen or a violator of the prohibition laws?

Mr. McKINNEY.—If your Honor please, it cannot be competent under any theory, unless I put on testimony as to that. Now, if I put in testimony as to that then he has a right to call witnesses to rebut it. Up until such time as that is done he has no right to call a man because I haven't proven anything in my case about that yet. Until such period as I do he has no right to do that in any theory of the rules of evidence. Now, if I had done that it would be a different question, but I haven't.

(Further discussion.)

(Testimony of E. C. Heidtbrink.)

Mr. LITTLEFIELD.—I will withdraw that question, then. That is all, Mr. Molsworth.

(Witness excused.)

TESTIMONY OF E. C. HEIDTBRINK, FOR
DEFENDANT.

E. C. HEIDTBRINK was thereupon produced as a witness in behalf of the defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY.

Q. Mr. Heidtbrink, how long have you known Tom Johnson?

A. Since about the first of June, 1927.

Q. You have sold him feed for his ranch?

A. Yes, sir.

Q. From that period of time? A. Yes, sir.

Q. What kind of feed have you sold him?

A. For a long period mostly hog feed; I believe there was some pigeon feed and other feed, but the bulk of it was hog feed.

Q. You have constantly done business with him from that period, and are doing business with him, hauling feed to his ranch up to the present date, aren't you? A. He has always hauled it.

Q. I will ask you if you know what is Mr. Johnson's reputation in the community in which he lives for truth and veracity? Do you know that, Mr. Heidtbrink?

A. Well, as to where he lives, you mean?

Q. I mean any place in this community, Portland.

(Testimony of E. C. Heidtbrink.)

A. I haven't been up around where his residence is. At the time he started his account with us, why, I didn't know anything about it. It seems the only person that he gave as a reference was T. D. Honeyman, so I inquired—I visited Mr. Honeyman, and Mr. Honeyman answered that his dealings had always been satisfactory as far as credit was concerned, or an open account, or any account.

Mr. McKINNEY.—You may examine.

Cross-examination by Mr. LITTLEFIELD.

Q. Where is your place of business?

A. At 13th and Johnson.

Q. What is the street number?

A. Street number, 475 Johnson.

Q. What is the name of it? A. The firm?

Q. The firm, yes.

A. Sunset Feed Mills.

Q. What do you deal in, Mr. Heidtbrink?

A. Just various kinds of dairying, poultry and hog feeds and hay.

Mr. LITTLEFIELD.—That is all.

Mr. McKINNEY.—That is all.

(Witness excused.)

TESTIMONY OF A. B. SMITH, FOR
DEFENDANT.

A. B. SMITH, was thereupon produced as a witness in behalf of defendant, and having been first duly sworn, testified as follows:

(Testimony of A. B. Smith.)

Direct Examination by Mr. McKINNEY.

Q. Mr. Smith, how long have you lived in Portland. A. Twelve years.

Q. How long, if at all, have you known the defendant Tom Johnson? A. Ten years.

Q. During that period you have had business dealings with him? A. Yes, sir.

Q. Of what nature and character?

A. Selling him automobiles.

Q. What kind of automobiles? [74]

A. Trucks. Originally I sold him a furniture wagon, an old furniture wagon, and later on when he entered into the hog business I furnished him garbage wagons.

Q. How many did you sell him? A. Six.

Q. Six garbage wagons? A. Yes.

Q. Do you know of his ranch out here?

A. Yes, sir.

Q. He used that in hauling garbage from the city of Portland to his ranch? A. Yes, sir.

Q. I will ask you if you know what his reputation in the community in which he resides is for truth and veracity? Do you know that, Mr. Smith?

A. Been very good.

Mr. McKINNEY.—You may examine.

Cross-examination by Mr. LITTLEFIELD.

Q. What kind of cars were these, Mr. Smith; Fords? A. Ford cars.

Q. What kind of bodies did the six have on them that you spoke of as garbage wagons?

(Testimony of A. B. Smith.)

A. Two of them had on steel body with a tapered back so it slides over and throws the food out, and then the others were with the garbage compartment for cans, and another type of compartment for the loose stuff, that is, the heavier stuff, like celery and lettuce and things of that kind. He also used it for hogs; I noticed lots of times he would be in there and have hogs in it too.

Q. Were any of these covered trucks? A. No.

Q. All had open bodies. A. Yes.

Q. You say you had sold him other cars before the time of the trucks?

A. Yes, I sold him one of these little furniture wagons, you know, to carry furniture in, canopy to it; open sides and canopy too.

Q. Oh, yes.

A. Body about this deep (indicating), and flare boards in the side. [75]

Q. You never sold him any passenger cars?

A. No, just sold him trucks.

Q. Who have you heard discuss his reputation, Mr. Smith?

A. Well, I know at the time that he wanted to get the cars he asked me if I knew a man down here at the Benson Hotel. At that time I had talked to Billy Boyd about him. He said, "Yes," he knew him. He said he was very glad to do something to assist him. Also Mr. Harry Joyce, who is now deceased, spoke very highly of him; as a matter of fact, told me he was giving him a start at the time, so I sold him some cars. I spoke to Mr.

(Testimony of A. B. Smith.)

Schmeer, he had been down here at the West Coast National Bank, and he spoke very highly about him. I asked him about it, of course, credit, you understand. He spoke very highly of him.

Q. From a credit standpoint he was A-1?

A. I spoke to him about his credit at that time, Schmeer.

Q. Who did you say he was buying cars from at that time? You mentioned something about him buying cars from somebody else? A. What?

Q. Didn't you? A. No.

Q. I misunderstood you.

A. From the time I first sold him an automobile I went up there to find out about it.

Q. Did you call up somebody else you say that had sold him cars, some other company?

A. No.

Q. That was Mr. Schmeer you were talking about. I see. You found him reliable, of course. He very promptly paid for these cars and paid his contracts?

A. He has always met his agreements.

Mr. LITTLEFIELD.—That is all.

(Witness excused.)

TESTIMONY OF DR. JAMES M. DOUGLAS, FOR DEFENDANT.

Dr. JAMES M. DOUGLAS was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY. [76]

Q. Dr. Douglas, are you a citizen of Portland?

(Testimony of Dr. James M. Douglas.)

A. Yes, sir.

Q. How long have you lived here?

A. Eighteen years.

Q. What is your occupation?

A. Veterinary surgeon.

Q. Have you known Tom Johnson?

A. Yes, sir.

Q. For how long? A. Oh, six or seven years.

Q. Have you had occasion to render him services on his hog ranch at St. Helens? A. Yes, sir.

Q. In what capacity, Doctor?

A. Oh, sick animals; just sows and whatever might come along.

Q. That is right. Now he has quite a good sized ranch out there? A. Yes, about eighty acres.

Q. And approximately how many hogs would he usually keep on his farm out there?

A. Well, from 350 to 400, counting the young ones.

Q. That you have seen yourself? A. Yes.

Q. Do you know the reputation of Tom Johnson in the community in which he resides for truth and veracity?

A. Very good as far as I have ever heard.

Mr. McKINNEY.—You may cross-examine.

Mr. LITTLEFIELD.—No cross-examination.

(Witness excused.)

Mr. LITTLEFIELD.—I think the Court here has always limited character witnesses to three or four. I don't see the need of taking up all day here on a lot of witnesses.

(Testimony of C. F. Nichols.)

Mr. McKINNEY.—I don't either, but a lot of these people have dealt with him extensively in a business way. That would go to show—

Mr. LITTLEFIELD.—That wouldn't be really competent anyway.

(Further discussion.) [77]

TESTIMONY OF C. F. NICHOLS, FOR DEFENDANT.

C. F. NICHOLS was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY.

Q. Mr. Nichols, how long have you known Tom Johnson? A. About three years.

Q. How long have you lived in Portland?

A. Seven years.

Q. What has been your occupation, please?

A. I am a hog salesman at the stock yards.

Q. Have you had occasion to visit Tom at his ranch? Do you buy stock from him?

A. I have sold to him and delivered to his ranch.

Mr. LITTLEFIELD.—If the Court please, I object to a continuation of this sort of evidence. I don't see how this is material, all these specific instances; taking up a lot of time here. I don't see the purpose of it or the relevancy of it in the first place.

The COMMISSIONER.—I am inclined to agree with you, but I want to give the defendant every op-

(Testimony of C. F. Nichols.)

portunity here. Proceed with this witness, at least.

Q. (By Mr. McKINNEY.) You have had occasion to buy large quantities of hogs from him?

A. Yes.

Q. In what amounts have you bought?

A. We sell them for the shipper. We don't buy them from him. He brings them in and we sell them for him.

Q. In what amounts over a period of time have you sold, approximately?

A. A truckload at a time.

Q. Truckloads at a time. Over a period of how long?

A. For the past three years.

Mr. McKINNEY.—You may cross-examine.

Mr. LITTLEFIELD.—No cross-examination.

(Witness excused.)

TESTIMONY OF J. H. WELLINGTON, FOR DEFENDANT.

J. H. WELLINGTON was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McKINNEY. [78]

Q. Mr. Wellington, during the year 1928, what was your occupation?

A. I was sheriff of Columbia County.

Q. Did you have occasion to know Thomas Johnson?

A. I did.

Q. In what way did you know him, in what capacity, what occasion?

A. Both as sheriff and not as sheriff. When he

(Testimony of J. H. Wellington.)

first came down there I had a filbert grove and he came up to the office to discuss filberts. He set out part of his place in filberts. Then I didn't see him only occasionally until this murder was committed out there last July.

Q. Was that a very large ranch out there?

A. Quite a large place.

Q. I will ask you, Mr. Wellington, if you know his reputation in the community in which he lives for truth and veracity?

A. As far as I have been able to know him it is good.

Mr. McKINNEY.—You may examine.

Mr. LITTLEFIELD.—No cross-examination.

(Witness excused.)

Mr. McKINNEY.—That is all. If your Honor please, I rise at this time to renew my motion. If your Honor would like to hear argument on this matter I would like to present it.

(The matter was argued to the Court.) [79]

State of Oregon,
County of Multnomah,—ss.

I, John S. Beckwith, one of the acting official reporters in the Circuit Court of the State of Oregon for the county of Multnomah, hereby certify that I reported in shorthand the testimony given in that matter entitled in the District Court of the United States for the District of Oregon, United States of America vs. Thomas Johnson, defendant, before Honorable K. F. Frazer, United States Commissioner, at the time and place mentioned in the cap-

tion hereof; that I thereafter prepared a transcript of my said shorthand notes, and the foregoing pages, numbered 1 to 70, both inclusive, contain a full, true and correct transcript of said testimony so taken by me.

Dated this 18th day of February, 1929.

JOHN S. BECKWITH,

I, Kenneth F. Frazer, U. S. Commissioner, Dist. of Oregon, certify the foregoing to be a full, true, and correct copy of all testimony taken before me in the above-entitled cause.

[Seal]

K. F. FRAZER,
U. S. Commissioner. [80]

FINAL MITTIMUS.

United States of America,
District of Oregon,
————— Division,—ss.

The President of the United States of America, to the Marshal of the United States for District of Oregon and to the Keeper of the Jail of Multnomah County in the State of Oregon,
GREETING:

WHEREAS: Thomas Johnson has been arrested upon the oath of F. E. Littlefield, Asst. U. S. Attorney for having, on or about the 1st day of December A. D. 1927 at Seattle, in Western District Washington, Northern Division in the District aforesaid, in violation of National Prohibition Act, Section 37, Federal Penal Code, and Tariff Act of 1922, conspired together with other persons to commit an offense against the United States, and to unlawfully import intoxicating liquor into the United States

from Canada, and has been examined by me, the undersigned, a United States Commissioner for said District of Oregon, upon the aforesaid charge, and probable cause has been shown to believe defendant guilty of said offense, the said Thomas Johnson has been required to give bail in the sum of twenty-five hundred dollars for his appearance before United States Dist. Court Western District Washington, at Seattle, Wash., whenever called, and from time to time thereafter as required pending examination, which requisition he has failed to comply with.

THESE ARE THEREFORE TO COMMAND YOU in the name and by the authority aforesaid, to receive the said Thomas Johnson prisoner of the United States of America, in the Jail of said Multnomah County, there to remain until he be discharged by due course of law.

Given under my hand and seal at Portland in the District aforesaid, this 25th day of February, A. D., 1929.

[Seal]

K. F. FRAZER,

United States Commissioner as Aforesaid.

Writ of certiorari and return thereon filed February 25, 1929.

I took the within named Thomas Johnson into custody on this writ, and released him on posting \$2500. bond as required by writ habeas corpus.

CLARENCE R. HOTCHKISS,

United States Marshal.

By A. Davidson,

Deputy. [81]

AND AFTERWARDS, to wit, on the 7th day of March, 1929, there was duly filed in said court, a return of respondent to writ of habeas corpus, in words and figures as follows, to wit: [82]

[Title of Court and Cause.]

RETURN OF MARSHAL TO WRIT OF HABEAS CORPUS.

United States of America,
District of Oregon,—ss.

Comes now Clarence R. Hotchkiss, United States Marshal for the District of Oregon, by Forrest E. Littlefield, Assistant United States Attorney, and makes this return on the writ of habeas corpus herein, and alleges and certifies as follows:

I.

That on the 18th day of January, 1929, Forrest E. Littlefield, Assistant United States Attorney, filed with K. F. Frazer, United States Commissioner for the District of Oregon, a removal complaint, charging the said Thomas Johnson and others with the commission of certain crimes against the United States in the Western District of Washington, Northern Division, in that they violated Section 37 of the Penal Code, National Prohibition Act, and Tariff Act of 1922.

II.

That on the 9th day of February, 1929, the said Thomas Johnson appeared before said K. F. Frazer,

United States Commissioner for the District of Oregon, for hearing upon said complaint for removal, which said hearing was continued to the 16th day of February, 1929; that at said hearing the Government introduced in evidence a duly certified copy of an indictment returned on the 16th day of January, 1929, in the United States District Court for the Western District of Washington, Northern Division, charging the said Thomas Johnson and others with [83] violation of Section 593 of the Tariff Act of 1922, violation of Section 37 of the Penal Code, and violation of the National Prohibition Act, alleged to have been committed in the Western District of Washington, Northern Division, which said indictment was duly received in evidence by the Commissioner; that the United States, at said hearing introduced testimony of witnesses identifying Thomas Johnson as one of the defendants named and charged in said indictment.

III.

That upon conclusion of said hearing before K. F. Frazer, United States Commissioner, said Commissioner held there was probable cause for believing that Thomas Johnson was guilty of the crimes charged in the indictment, copy of which had been introduced in evidence, and on the 25th day of February, 1929, ordered the said Thomas Johnson held for removal, and fixed bail in the sum of \$2,500 for his appearance in the United States District Court of the Western District of Washington, Northern Division, at Seattle, Washington, that said United States Commissioner, on said 25th day

of February, 1929, committed the said Thomas Johnson into my custody to await the warrant of removal; that said Thomas Johnson was later, on said date, released by me under \$2,500 bond, pursuant to the command of the writ of habeas corpus issued out of this Court on said date.

IV.

That the said Thomas Johnson was so detained and imprisoned by me under and by virtue of said commitment duly issued by K. F. Frazer, United States Commissioner for the District of Oregon, and not otherwise.

CLARENCE R. HOTCHKISS,

United States Marshal for the District of Oregon.

FORREST E. LITTLEFIELD,

Assistant United States Attorney.

Filed March 7, 1929. [84]

AND AFTERWARDS, to wit, on Thursday, the 7th day of March, 1929, the same being the 4th judicial day of the regular March term of said court,—Present the Honorable JOHN H. McNARY, United States District Judge; presiding,—the following proceedings were had in said cause, to wit: [85]

In the District Court of the United States for the
District of Oregon.

No. L.-10556.

In the Matter of the Application of THOMAS
JOHNSON for a Writ of Habeas Corpus.

MINUTES OF COURT—MARCH 7, 1929—
JUDGMENT.

The above-entitled cause having come on for hearing before the Honorable John McNary on the 27 day of February, 1929, on a writ of habeas corpus and a petition for writ of certiorari, and the presentation and hearing on order for removal to the United States District Court for the Western District of Washington, Northern Division, the petitioner being represented by C. T. McKinney and F. J. Lonergan, and the Court being fully advised in the premises after hearing on said order of removal, did on said day deny the petition for writ of habeas corpus and hearing on order of removal;

Now, therefore, it is by the Court ORDERED, ADJUDGED AND DECREED that the writ of habeas corpus be denied and the removal granted to the Western District of Washington, Northern Division, and that removal be stayed pending appeal and said stay to continue until hearing and decision of the Circuit Court of Appeals for the Ninth Circuit, and that petitioner be released on bail pending said termination, in the amount fixed

by said Court in the sum of two thousand five hundred dollars (\$2,500.00).

JOHN H. McNARY,
United States District Judge.

Service acknowledged 3/7/29.

FORREST E. LITTLEFIELD.

Filed March 7, 1929. [86]

AND AFTERWARDS, to wit, on the 7th day of March, 1929, there was duly filed in said court, a petition for appeal, in words and figures as follows, to wit: [87]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Thomas Johnson, appellant above named, deeming himself aggrieved by the judgment and order herein on the 7th day of March, 1929, has appealed and does hereby appeal from the said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit and prays that the appeal be allowed, and a transcript of the records and proceedings and papers together with the original records of the United States Commissioner brought to the District Court on a petition for a writ of certiorari, duly authenticated, may be sent from said District Court to the Circuit Court of Appeals for the Ninth Circuit and the records made by the District Court on removal.

C. T. McKINNEY,
Attorneys for Petitioner.

Thomas Johnson, appellant above named, has appealed and does hereby appeal from that certain order, judgment and decree made herein by the above-entitled court on the — day of February, 1929, denying the writ of habeas corpus, and on hearing granting the order of removal to the Northern Division of the Western District of Washington.

C. T. McKINNEY,
Attorneys for Appellant.

Service acknowledged 3/7/29.

FORREST E. LITTLEFIELD.

Filed March 7, 1929. [93]

AND AFTERWARDS, to wit, on Thursday, the 7th day of March, 1929, the same being the 4th judicial day of the regular March term of said court,—Present the Honorable JOHN H. McNARY, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [94]

[Title of Court and Cause.]

MINUTES OF COURT—MARCH 7, 1929—ORDER ALLOWING APPEAL.

For good cause shown by petition and assignment of errors by the appellant herein, it is, hereby, ORDERED, ADJUDGED AND DECREED that appeal be allowed herein to the Ninth Circuit Court of Appeals from the order denying the writ

of habeas corpus and writ of certiorari and granting the order of removal to the Western District of Washington, Northern Division, and that the order of removal be stayed until final determination by the Circuit Court of Appeals for the Ninth Circuit and/or the Supreme Court of the United States.

JOHN H. McNARY,
United States District Judge.

Service acknowledged 3/7/29.

FORREST E. LITTLEFIELD.

Filed March 7, 1929. [95]

AND AFTERWARDS, to wit, on the 7th day of March, 1929, there was duly filed in said court, a praecipe for transcript in words and figures as follows, to wit: [96]

[Title of Court and Cause.]

To the Clerk of the United States District Court of
the District of Oregon:

PRAECIPE FOR TRANSCRIPT OF RECORD.

You are hereby requested to forward to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the following records, made and entered in the above-entitled cause in the District Court:

1. Petition for writ of habeas corpus.
2. Return of writ.
3. Judgment of the District Court.
4. Order granting removal.

5. Petition for appeal.
6. Order allowing appeal.
7. Notice of appeal.
8. Assignments of error.
9. Citation.
10. Original records and files of the United States Commissioner, brought to the District Court on petition for writ of certiorari and this praecipe.

C. T. McKINNEY,
Attornies for Appellant.

Service acknowledged, 3/7/29.

FORREST E. LITTLEFIELD.

Filed March 7, 1929. [97]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages, numbered from 2 to 97, inclusive, constitute the transcript of record upon the appeal in a case in said court, in which Thomas Johnson is petitioner for a writ of habeas corpus, and is appellant, and Clarence R. Hotchkiss, United States Marshal for the District of Oregon, is respondent and appellee; that the said transcript has been prepared by me in accordance with the praecipe for transcript filed by said appellant, has been by me compared with the original

record thereof, and is a full, true and complete transcript of the record and proceedings had in said court in said cause which the said praecipe designated should be included therein, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$45.25, and that the same has been paid by the said appellant.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 23d day of May, 1929.

[Seal]

G. H. MARSH,

Clerk. [98]

[Endorsed]: No. 5905. United States Circuit Court of Appeals for the Ninth Circuit. Thomas Johnson, Appellant, vs. Clarence R. Hotchkiss, United States Marshal for the District of Oregon, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed August 7, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Frank H. Schmid,

Deputy Clerk.

